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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-544

THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, ETC., ET AL.,
Petitioners,

VERSUS

ROBERT L. DOWELL, an infant who sues by A. L. DOWELL, his father and next friend,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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September, 1972

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In the
Supreme Court of the United States
OCTOBER TERM, 1972

No. ----------

THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, ETC., ET AL.,
Petitioners,

VERSUS

ROBERT L. DOWELL, an infant who sues by A. L. DOWELL, his father and next friend,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Board of Education of the Oklahoma City Public Schools, Independent District No. 89 of Oklahoma County, Oklahoma, a public body corporate,[1] prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in a case between the above named parties on August 4, 1972.

[1] The statutory name of the School District is Independent School District Number 89 of Oklahoma County, Oklahoma. Its boundaries are not the same as those of the City of Oklahoma City, a separate and distinct municipal corporation, but it is commonly known as and will be referred to herein as the Oklahoma City School District. The Petitioners are the Board of Education and its members, and the Superintendent of Schools, of the School District.

CITATIONS TO OPINIONS BELOW

The judgment sought to be reviewed (judgment rendered on August 4, 1972, by the United States Court of Appeals for the Tenth Circuit) affirmed a judgment of the United States District Court for the Western District of Oklahoma.

The opinion delivered in the District Court judgment is reported in 338 F.Supp. 1256 (W.D. Okla. 1972). A copy is appended to this Petition, as Appendix A.

The opinion delivered in the Court of Appeals judgment had not been reported in any official or unofficial report at the time this Petition was prepared. A copy is appended to this Petition, as Appendix B.

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was rendered and entered on August 4, 1972, and mandate was issued forthwith. There was no order respecting a rehearing, or granting an extension of time within which to petition for certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Jurisdiction of the District Court to order the Oklahoma City School District to operate its schools under a new school integration plan, after the District Court had terminated its jurisdiction in the case.

2. Power of the District Court to issue an integration order for schools which had become predominantly of one race solely from the shifting of population and not as a result of any State discriminatory action.

3. Validity of a District Court order requiring students to be transferred to schools outside their regular attendance areas to achieve a racial balance in all schools of the Oklahoma City School District.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 2000C-6, and Section 806 of Public Law 92-318.

STATEMENT OF THE CASE

This case originated in the United States District Court for the Western District of Oklahoma. The bases for Federal jurisdiction were 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3).

The case was brought against the Board of Education and officials of Independent School District Number 89 of Oklahoma County, Oklahoma, commonly known as the

Oklahoma City School District, in the name of a resident of an adjoining elementary school district, to compel the admission of his son to a high school of his choice in the Oklahoma City School District.

The District Court decided that the Oklahoma City School District had not completely integrated its schools. Three experts were named to make a study. They submitted an integration plan in a Report entitled "Integration of the Public Schools of Oklahoma City." The court approved the plan, which called for in-service education of faculties, a policy permitting students to transfer from schools in which their race was in the majority to schools where their race was in the minority, a definite ratio of black and white teachers in all schools, and the pairing of the attendance areas of four secondary schools. On appeal, the plan was approved, except the provisions requiring in-service education of faculties. *Board of Education of Oklahoma City Public Schools* v. *Dowell*, 375 F.2d 158 (10th Cir. 1967), *cert. den.* 387 U.S. 931, 87 S.Ct. 2054, 18 L.Ed.2d 993.

The School District proceeded to carry out the integration plan in the 1967-68 school year.

The District Court decided there should be another integration plan. The Oklahoma City Board of Education appointed a Committee on Equality of Educational Opportunity to make recommendations; and on May 30, 1969, the Board of Education adopted another plan which was filed with the District Court and subsequently approved with an additional provision suggested by the court.

On September 11, 1969, the District Court ordered the Board of Education to file another plan for the secondary schools by October 31, 1969, and another plan for the elementary schools by March 31, 1970. The plan for secondary schools was filed in due time, a hearing thereon was held on December 15, 1969, and the plan was approved by the District Court on January 16, 1970. *Dowell* v. *Board of Education of the Oklahoma City Public Schools,* 307 F.Supp. 583 (W.D. Okla. 1970).

On July 29, 1970, on appeal, the United States Court of Appeals for the Tenth Circuit approved the plan for the secondary schools, with one change. *Dowell* v. *Board of Education of the Oklahoma City Public Schools,* 430 F.2d 865 (10th Cir. 1970). And on the same date allowed the Oklahoma City Board of Education until December 1, 1970, to submit an integration plan for the elementary schools. *Dowell* v. *Board of Education of the Oklahoma City Public Schools,* 430 F.2d 871 (10th Cir. 1970).

On August 21, 1970, the District Court issued a Findings and Order divesting itself of jurisdiction in the case and ending the case. A copy is appended to this Petition, as Appendix C.

On November 20, 1970, the Oklahoma City School District filed with the District Court an integration plan for the elementary schools in Oklahoma City, as previously ordered by the Court of Appeals; and the plan, which was neither approved nor disapproved by the District Court, was put into operation at the beginning of the 1971-72 school year.

In the meanwhile, on May 3, 1971, the District Court issued an Order vacating the previous Findings and Order of August 21, 1970, closing the case. A copy is appended to this Petition, as Appendix D.

Hearings on the integration plans were held by the District Court in September and November 1971; and on December 9, 1971, the District Court held a hearing on a new integration plan submitted by the Plaintiff in the case. On February 1, 1972, the District Court issued its Memorandum and Order adopting the new integration plan. *Dowell* v. *Board of Education of the Oklahoma City Public Schools,* 338 F.Supp. 1256 (W.D. Okla. 1972). (Appendix A to this Petition.)

The Petitioners herein, Defendants in the trial court, appealed to the United States Court of Appeals for the Tenth Circuit. The appeal was docketed February 25, 1972.

Subsequently, on April 27, 1972, the United States of America (Department of Justice) filed a Motion for Leave to File Memorandum as Amicus Curiae Out of Time; and on May 15, 1972, the Court of Appeals denied the Motion, after having previously granted it.

On August 4, 1972, the Court of Appeals entered a formal judgment affirming the judgment of the District Court that had been entered on February 1, 1972. (Appendix B to this Petition.)

REASONS FOR GRANTING THE WRIT

1. THE JUDGMENT WAS VOID FOR LACK OF JURISDICTION.

The District Court order for a new integration plan for the Oklahoma City School District several months after the case had been closed raises a serious question, that should be settled by this Court, of whether a District Court can arbitrarily, without notice, and whenever it suits the Court, reinvest itself with jurisdiction over the parties and the subject matter after the case has been terminated.

On August 21, 1970, the District Court issued a Findings and Order (Appendix C to this Petition), concluding with these words:

> "THEREFORE, IT IS ORDERED that this case be and is hereby closed."

There can be no doubt as to what the District Court did, and intended to do. The Findings and Order began with these words:

> "The Court finds and concludes that the time has come for this Court to divest itself of jurisdiction and end this case."

Other remedies were suggested in the Findings and Order, if further integration might be needed in the Oklahoma City School District.

The Court found there was no genuine adversary issue then pending and undecided. Provision was made for the continued full force and effect of all previous orders. There was no subsequent motion for a new trial or any other mo-

tion which would toll the time for filing notice of appeal. There was no notice of appeal. The dismissal order became final.

The District Court thereby surrendered, relinquished and terminated jurisdiction of the subject matter of the litigation—the integration of the Oklahoma City Public Schools.

The District Court, in its order of February 1, 1972, tried to say that its action terminating the case was abortive—that *Raney* v. *Board of Education*, 391 U.S. 443, 449 (1968), and *Board of Education of Oklahoma City Public Schools* v. *Dowell*, 375 F.2d 158, 168 (C.A. 10 1967), required the Court to retain jurisdiction. However, these cases held merely that retention of jurisdiction is desirable. They did not hold that dismissal is impossible. As a matter of fact, these cases, in exhorting District Courts to retain jurisdiction, in saying that they *should* retain jurisdiction, recognized that jurisdiction could be terminated.

And in holding that the parties acquiesced in the resumption of jurisdiction by the District Court, the Court of Appeals ignored the principle that jurisdiction cannot be waived, and that the question of jurisdiction may be raised at any time. *Gainesville* v. *Brown-Crummer Investment Co.*, 277 U.S. 54, 48 S.Ct. 454, 72 L.Ed. 781.

Jurisdiction is a threshold question which must be examined. *Whitney National Bank* v. *Bank of New Orleans and Trust Co.*, 323 F.2d 290 (D.C. 1963).

It cannot be cured by consent of the parties. *Industrial Addition Ass'n* v. *Commissioner of Internal Revenue*, 323 U.S. 310, 65 S.Ct. 289, 89 L.Ed. 260 (1945).

2. THE JUDGMENT WAS IN CONFLICT WITH OTHER DECISIONS.

The decision of the District Court is in direct conflict with the decisions in the following cases:

—*United States of America* v. *Board of Education, Independent School District No. 1, Tulsa County, Oklahoma,* 459 F.2d 720 (10th Cir. 1972);

Keyes v. *School District No. 1, Denver, Colorado,* 445 F.2d 990 (10th Cir. 1971), *cert. granted* 404 U.S. 1036, 92 S.Ct. 707, 30 L.Ed.2d 728;

Bell v. *School City of Gary, Indiana,* 324 F.2d 209 (7th Cir. 1963), *cert. den.* 337 U.S. 924, 84 S.Ct. 1223, 12 L.Ed.2d 216;

Deal v. *Cincinnati Board of Education,* 369 F.2d 55 (6th Cir. 1967), *cert. den.* 389 U.S. 847, 88 S.Ct. 39, 19 L.Ed.2d 114.

There was undisputed and uncontroverted evidence in the trial court that housing patterns changed a number of Oklahoma City Schools from predominantly white to predominantly black—were racially imbalanced with black students solely because black families had moved into the attendance areas of schools that had been predominantly white (R., Vol. III, pp. 26, 27). Yet the District Court (and the Court of Appeals by affirming the decision of the District Court) gave these schools the same treatment as other schools, in the new integration plan.

This was in conflict with the decision in the *Denver* case (now before this Court for review) that a District

Court is without authority to issue an integration order for schools which have become predominantly of one race solely from the shifting of population and not as a result of any State discriminatory action.

The decision of the Court of Appeals in this case was contrary to its decision in the *Tulsa* case, in which the Court of Appeals held that schools which have become predominantly black because of population movements are beyond the equity power of the Federal Courts.

Other Circuits, in the *Gary* and *Cincinnati* cases, have held that school officials have no constitutional duty to change school attendance areas so as to remedy racial imbalance which has resulted from residential patterns rather than from governmental action, or to balance the races in public schools where racially imbalanced neighborhood schools have resulted from residential patterns, and have not been caused by any act of discrimination by the Board of Education.

3. THE ORDER REQUIRING A NEW INTEGRATION PLAN TO ACHIEVE A RACIAL BALANCE IN EVERY SCHOOL WAS IN EXCESS OF A FEDERAL COURT'S JURISDICTION.

The purpose of the new integration plan was, according to its proponents, to "mix bodies" (R., Vol. III, pp. 50, 160, 171, 172; R., Vol. IV, p. 31)—not for desegregation, but for integration to achieve a racial balance in every school of the Oklahoma City School District (R., Vol. 1, p. 109).

In *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 24, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), this Court said:

"If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole."

Furthermore, the proviso of Section 407(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000C-6(a)) was made applicable to the Oklahoma City School District by Section 806 of Public Law 92-318 which reads as follows:

"The proviso of section 407 (a) of the Civil Rights Act of 1964 providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and to every public school system, public school and public school board, as defined by title IV under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States."

CONCLUSION

The Court of Appeals erred in affirming the judgment of the District Court, which was in conflict with decisions of this Court and Courts of Appeals; and a writ of certiorari should be granted.

Respectfully submitted,

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September, 1972

APPENDICES

APPENDIX A

FILED
FEB 1 1972
REX B. HAWKS
Clerk, U. S. District Court
By S. J. BAILEY
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, etc. et al.,)
)
Plaintiffs,)
v.) Civ. 9452
)
BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This is another step in the struggle to implement the constitutional imperative for a unitary school system in the Oklahoma City School District. This case has been before this court in one posture or another for about ten years. Although unnecessary to detail every facet of the complex history of this litigation, every action of this court has been predicated upon the finding that as historically administered, the policies of the Defendant School Board have reflected a system of state imposed and state preserved segregation, and that because it had operated a state compelled dual system, the Defendant School Board was "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board of New Kent County*, 391 U.S. 340, 437-38 (1968).[1]

[APPENDIX]

On August 30, 1971, the Court of Appeals directed this court to hold hearings for the purpose of determining the effectiveness of the plans heretofore approved for the junior and senior highschools of Oklahoma City and to evaluate the expected effectiveness of the plan for the elementary schools, and then to put into effect forthwith whatever modification of either or both plans thereupon found necessary, or additional plans, to accomplish the desegregation of the Oklahoma City Public Schools in accordance with the guidelines set forth by the Supreme Court. Pursuant to this directive, hearings on these matters were conducted by the court on September 21, November 18, 19, and December 9, 1971. Appearing therein for the Plaintiffs was Mr. John W. Walker, Attorney at Law, Little Rock, Arkansas. The individual members of the Defendant School Board were present in person and with the Board's attorney, Mr. J. Harry Johnson, Oklahoma City, Oklahoma.

Three plans are presently before the court for consideration. First there is the current plan in operation in the Oklahoma City Public Schools. The School Board stoutly maintains this is adequate to meet constitutional requirements and has refused to present any other plan for the further desegregation of the Oklahoma City Public School System. It did suggest to the court the name of Dr. Harold H. Eibling, Superintendent of Schools, Columbus, Ohio, as being a person who is an expert in the field of education and in the field of school administration and one who is competent and qualified to evaluate, analyze, and propose a full and complete plan for the desegregation of the Oklahoma City School District. Following the recommendation of the Board, the court, on June 16, 1971, appointed Dr. Eibling to make a careful study in depth of the current plan adopted by the Oklahoma City School Board and to make a report and recommendation concerning the current plan and any modifications which might be necessary to meet constitutional requirements. Later Dr. Eibling requested that Dr. Forrest E. Conner of Washington,

D. C., another expert recommended by the Defendant School Board, be appointed to assist him in his task. The "Consultants' Plan," together with the objections of the Defendant School Board was filed with the court on November 9, 1971. The Plaintiffs have submitted a plan prepared by Dr. John A. Finger, Providence, Rhode Island, a professor of education at Rhode Island State University and an expert in the field of desegregation and integration.

I
CURRENT PLAN

The Public School System operated by the Defendant School Board is comprised of 86 regular elementary schools (K-6), one middle school (6-8), twelve junior highschools (7-9), eight senior highschools (10-12), Dunjee for grades 7-12, Star-Spencer for grades 9-12, and five special schools.[2] On September 10, 1971, the total enrollment was 68,840: 76.6 per cent of these students were white and 23.4 per cent black. There are 31 schools attended entirely by students of one race. 78 per cent of the public schools are at least 90 per cent predominantly white or black.[3]

A. HIGHSCHOOLS.

The highschools are being operated under what is generally described as the Cluster Plan. The highschools have been divided into two clusters. Cluster A includes Capitol Hill, Douglass, Grant, and Southeast Highschools; Cluster B includes Classen, Marshall, Northeast, and Northwest Highschools. Dunjee and Star-Spencer Highschools, while nominally attached to Cluster B, because of their remote locations serve only as homesite schools. Each cluster contains one highschool with a majority black enrollment. This court approved a "COMPREHENSIVE PLAN FOR COMPLETE DESEGREGATION OF SENIOR AND JUNIOR HIGHSCHOOLS OF THE OKLAHOMA CITY PUBLIC SCHOOL SYSTEM AFTER 1969-1970 SCHOOL

YEAR" on January 16, 1970, which was affirmed by the Court of Appeals which, however, noted:

> "It is of course apparent that the real and ultimate issue in any case such as this is the actual effectiveness of the plan proposed. This is difficult to predict in this instance since the plan presented is a virtually untried method and one departing widely from customary school attendance and scheduling practices." *Dowell v. Board of Education of Oklahoma City Public Schools*, 430 F.2d 865, 868 (CA 10 1970).

The current plan is not the plan approved by this court. The plan submitted provided:

> "Under this plan, each secondary school will serve in a dual capacity. It will be a home-base school for students within its attendance area and will serve as a specialized center for a specified curricular area. For example, one school could serve as a *Social Studies Center,* another as a Science Center, another as a Math Center. Each school, in its role as home-base, will offer some elective courses and such activities as physical education, athletics, and music to its resident students; in its role as a specialized Center, it will offer *a full range* of courses in that curriculum area to students from several attendance areas, including its own.
>
> • • • • • •
>
> ". . . Within each cluster, individual schools will serve as home-base schools for students in their own attendance areas and as specialized schools for students from all schools within that cluster.
>
> • • • • • •
>
> *"Students will spend varying amounts of time each week in each of the Centers, though not less than half the school day at any one Center."* [Emphasis supplied.]

As conceived by the court from the language of the plan and the testimony in support,[4] the school acting as a specialized center would offer *all* courses including the required courses in the subject area of specialization. No student could avoid attending the other schools within his cluster.

Although specifically directed by the court to carry out the terms of such plan as approved, the Defendant School Board, without notice to or permission by the court, proceeded to emasculate the plan. It eliminated social studies as a specialized area of one of the highschools of each cluster, although this subject had been included in the original plan submitted to the court. It did not concentrate a subject area specialization in only one senior highschool. At the present time in Cluster A, there are three highschools with advance foreign language courses and three highschools offering advanced mathematics courses. In Cluster B, the same situation exists. This change obviously negated many of the advantages of specialization set forth in the plan which was submitted to the court with regard to concentration of material, staff, and supervision. Each home-base school was permitted to offer all of the required courses in the four areas of subject specialization.

These unauthorized basic changes in the implementation of the plan destroyed it as a tool of desegregation. The vast majority of the students in the senior highschools do not participate in the Cluster Plan. By electing certain subjects a student can spend his full three years in his home-base school, thereby thwarting any effective desegregation. Out of a total of 13,796 students enrolled in eight senior highschools participating in the Cluster Plan in September 1971, only 1,673 or approximately 12 per cent were participating in an interchange. The School Board presented no direct evidence of the actual numbers of black students participating in an interchange. However, the evidence strongly indicates that the ratio of black students partici-

pating is much less than for their white counterparts. By including only the advanced electives in the Cluster Plan, with few exceptions, only the high achievers are participating.

Stripped of the beautiful adjectives and the meaningless promises used to obscure its true intent and effect, the current Cluster Plan is simply a "freedom of choice" plan. It does not work and will not work to desegregate the schools. Of the eight highschools in the plan, four of the highschools are 98 per cent or more white, and one highschool is 100 per cent black. Dunjee is 98.2 per cent black. The impotency of the current plan to accomplish a unitary school system is graphically illustrated by a comparison of the enrollment figures submitted prior to the present plan and the present enrollment statistics.[5] The trend is clearly toward resegregation. Douglass Highschool has again become a one-race school, and Northeast and Harding have become majority black schools. The classes within the cluster schools and the programs are largely segregated. Typically at Douglass, a black highschool, large numbers of white students arrive at the school and sit in white classrooms with few blacks. The converse situation occurs as groups from a school with predominantly black enrollment are transported to a school with a predominantly white enrollment, and upon arrival, sit in a class as a unit or with only two or three white students. A "freedom of choice" plan which does not work cannot be approved. *Green v. County School Board, supra.*

B. JUNIOR HIGHSCHOOLS.

Of the twelve junior highschools in the system (grades 7-9), it may fairly be said that eleven are substantially disproportionate in their racial composition. Only one junior high (Eisenhower) and the one middle school, Rogers, (grades 6-8), can clearly be said to have lost their racial identity. Eight of the schools are predominantly white hav-

ing less than ten per cent black enrollment and of these eight, five have less than five per cent black enrollment. There are two schools which are predominantly black, having less than five per cent white enrollment.

In the plan approved by the court, the key provision was for the all black Moon Junior Highschool to be closed for the 1970-1971 school year, and the pupils there assigned to Central, Capitol Hill, Jackson, Jefferson, Roosevelt, and Webster Junior Highschools. Later, however, the School Board decided not to close this school and the court acquiesced in their request to make this material alteration in what appears now to have been misplaced reliance upon the good faith of the School Board. The current plan for junior highschools consists of a program of interschool and intergroup activities consisting of interschool choral and instrumental groups, exchange assemblies, panels, interschool clubs, science fair, and art festivals. The School Board has no other plan to integrate the junior highschools[6] and it is clear that the current plan will not change the racial identity of a single school. Intercultural exchanges are no substitute for a real plan to convert to a unitary system now.

C. ELEMENTARY SCHOOLS.

Of the 86 regular elementary schools in the District, 76 are substantially disproportionate in their racial composition. Only 10 can clearly be said to have lost their racial identity.[7] 53 schools have less than 10 per cent black enrollment; 43 of the 53 have less than 5 per cent black enrollment. 16 schools are predominantly black; of the 16, 7 are 100 per cent black, and the remaining 9 have at least 97.8 per cent black enrollment.

On November 20, 1970, Defendant School Board filed a plan for the desegregation of the elementary schools in the system, which it referred to as the "OPENING DOORS IN EDUCATION" plan. This plan provides for grouping of

the elementary schools for periodic regularly scheduled joint activities. Groupings are arranged to contain pupils of all racial and socio-economic groups found in the population of the community. It does not make any provision for kindergarten through the third grade. Pupils in grades 4, 5, and 6 may participate *with parental permission only.* Each group of schools is supposed to take part in a variety of special programs. Regular classroom activities would take place within the individual schools. Special programs include the exchange of a portion of the student body between schools; groupings of the same grade from several schools or groupings of all three grades from a selection of schools for special programs such as a symphony concert; an art lecture—demonstration; visits to the zoo, libraries, and parks; informal seminars with artists, musicians, writers, businessmen, athletes, and the like. For the school year 1971-1972, seven one-half day experiences were scheduled for the fourth grade, eight for the fifth, and nine for the sixth grade. A voluntary program which during the school year involves not at all the first three grades, the fourth grade for only three and one-half days, the fifth grade for four days, and the sixth grade for four and one-half days is obviously only a token effort toward desegregation. It cannot even be described as a good-faith gesture toward constitutional requirements. The "experiences" no doubt are enjoyed by the children and may perhaps be worthwhile, but the dual system of the School District remains unaffected. The constitutional mandate is not for integrated "experiences," but for a desegregated school system. Isolated opportunities for inter-relation between the races cannot convert a dual system to a unitary one.

II

THE CONSULTANTS' PLAN

The substance of the CONSULTANTS' PLAN is for a return to the original concept of the Cluster Plan. It would add social studies as a specialized area in one of the highschools of each cluster. It would concentrate a subject area specialization in only one senior highschool. One highschool in each cluster would specialize in science, another in mathematics, another in social studies, and the fourth in foreign language. It would add all of the required courses in the four areas of subject specialization to the curriculum of the highschool specializing in that subject, and none would be offered in other home-base schools. The plan would assure every student interracial exchange experiences in at least two of his three years in highschool. A student in the twelfth grade would participate in the exchange only if he selected an elective subject not offered in his home school. The plan also would make it mandatory for principals in highschools having a subject area of specialization to arrange class schedules of students to achieve as nearly as possible a 50-50 racial mix in cluster classes. Insofar as possible, the plan would also incorporate the lunch period into the cluster interchanges.

The consultants also recommend that the senior highschool cluster plan, with minor adjustments because of the differences in required and elective subjects, be instituted in junior highschools.

For the elementary schools, the consultants propose to group them on the basis of one school with predominantly black enrollment to four or five schools with predominantly white enrollment, so that the grouping would reflect approximately the city-wide ethnic ratio. One school, preferably the one nearest the geographic center of the group, would then be designated as the Interaction Center. All classes in music, art, crafts, drama, physical education, and pre-vocational for all schools in the group would be sched-

uled at the Interaction Center. Pupils would receive their basic subjects at their neighborhood school, but would be transported to the Center school for the closses indicated. The Consultants' Plan also would involve only grades 4-6.

Although the consultants were proposed by the School Board and the Cluster Plan was its brain child, the School Board treated the Consultants' Plan with great hostility. It objected to the plan because: (1) it would not promote better learning for the students; (2) it would require extensive changes in the physical arrangement and size of the buildings necessary to put the plan into effect; (3) it would require enormous expenditures for transportation facilities, laboratories, and equipment, and in view of the limited financial resources of the District, expenditures necessary to implement the plan would cause a curtailment of educational programs now being offered to the students of the District. The Superintendent of Schools described the plan as not feasible or workable. The Plaintiffs assert that the plan does not fully integrate the schools and that there are more effective alternative plans readily available which would, in fact, desegregate.

The Consultants Plan now stands without a sponsor denounced by friend and foe alike. While the court appreciates the services of the consultants and believes that their suggestions are not without merit,[8] the School Board has peculiar knowledge of that plan which it so eloquently presented and defended two years ago. Accordingly the court accepts its assessment of its inherent difficulties and finds the Consultants' Plan neither feasible nor workable.

PLAINTIFFS' PLAN

III

A. SENIOR HIGHSCHOOLS.

The PLAINTIFFS' PLAN for the senior highschools is to convert from a 10-12 grade system to a 9-12 grade system. The plan, however, is not dependent upon this con-

version. The essential element of the recommended plan is the restructuring of highschool attendance zones so that each enrolls both black and white pupils. To accomplish this it uses an elementary school feeder system where students are assigned to a highschool based on the elementary school attendance zone in which their home is located. By utilizing the designated elementary schools to feed the senior highschools, no senior highschool would have less than 15 per cent nor more than 30 per cent black enrollment.[9]

B. JUNIOR HIGHSCHOOLS.

At the junior high level, Plaintiffs propose to change the grade structure from 7-8-9 to 6-7-8. The junior highschools are desegregated by the establishment of attendance zones for each school. The attendance zones are described in terms of the elementary school that the child will have attended. Most of the junior high or middle school zones will be somewhat similar to the present attendance zones except that a large number of the black students will be transported to the outlying junior highschools so as to desegregate those schools. Most of the other changes simply involve a reassignment of schools without an appreciable change in the distance a pupil resides from a school. Moon Junior Highschool will be closed and Kennedy converted to a part of the Douglass-Kennedy Highschool. With the restructured attendance zones for the junior highschools, again no school would have less than 15 per cent or more than 30 per cent black enrollment.[10]

C. ELEMENTARY SCHOOLS.

Plaintiffs present two different plans for the desegregation of the elementary schools. The first plan would group schools ... they are now grouped by the "OPENING DOORS IN EDUCATION" program. In each group the school that is now all black or majority black would serve all fifth grade pupils, while the other schools would serve

all of grades 1-4. Within any one of the clusters, black children will be attending what were previously white schools for four years, while the white children will be attending the previously black schools for one year. Otherwise stated, the white students in the group would attend their neighborhood schools for grades 1-4 and would attend the formerly black school for the fifth grade. Black students formerly assigned to the fifth grade Center school would be split up and would attend the majority white schools for grades 1-4. They would then attend the fifth grade in the Center school which would be their neighborhood school. It is suggested that the most feasible method of assignment for the attendance of black students in grades 1-4 is on a geographic basis. If any school in a cluster is already desegregated because residing within its present attendance zone and enrolled in the school are more than 10 per cent black and less than 35 per cent black, then that school would operate as a school enrolling grades K-5.

It is proposed by the Plaintiffs that kindergartens be treated specially and the parents be allowed a choice for kindergarten attendance. All existing elementary schools will house kindergartens. This freedom of choice is justified as permitting kindergarten children to go to the school in the vicinity of the place where the mother may be working or to walk to kindergarten with other siblings or neighborhood children or to go on a bus with other children who may be going to different schools in their cluster.

Under the second plan proposed by the Plaintiffs as an alternative for the elementary schools, the school administration would define new elementary school attendance zones that would increase the number of schools that would fall within the range of 10-30 per cent black and still remain as essentially walk-in schools. The author of the plan suggests that this would be feasible where current black schools are located fairly close to white neighborhoods or where white schools are near black neighbor-

hoods. After some schools are desegregated by boundary changes, all remaining majority black and majority white schools would be grouped on a grade assignment plan as proposed in the first alternative. The kindergarten options would be the same under the second plan as the first.

D. PLAN FOR STAR-SPENCER-DUNJEE AREA.

The area around Star-Spencer Highschool and Dunjee Junior-Senior High poses special problems because of the relative isolation from the rest of the School District. Plaintiffs propose a special plan for the desegregation of the area served by these schools. Parker Elementary School will be discontinued as a regular elementary school. Students residing in its attendance zone would be assigned to Star, Willowbrook, and Telstar. The grade structure in these three schools will be changed from K-6 to K-4. Green Pastures would be desegregated by restructuring its attendance zone. Parker and perhaps some facilities in Dunjee would become a 5-6 grade center, and all students would attend that school for these grades. All students in the area would attend Rogers in grades 7-9 and Star-Spencer in grades 10-12.

The Defendant School Board opposes the Plaintiffs' Plan because it is "based primarily on mixing of students," "ignores quality of education in the desegregation process," and allegedly would cost too much. Even the opponents must concede, however, that the plan can be implemented and that it will desegregate the schools.[11]

IV
THE SOLUTION

From the foregoing observations and findings, it is manifest that we now have a plan that does not work, a plan that will not work, and a plan that will work. In this situation the court has no real choice. It must select the plan that promises realistically to work now.

The court finds that the fears expressed concerning the Plaintiffs' Plan are not justified. The plan would in no way diminish the quality of education in the Oklahoma City Public School System, but would, in fact, add a new dimension of quality, namely, children will learn about the kind of world they really live in and how to live in a bi-racial society. The plan does not require, and this court does not require, that any particular degree of racial balance or mixing be achieved or maintained. It is not necessary that every school in the District always reflect the racial composition of the total system. The plan uses the ratio of 20 per cent black as a starting point in the process of creating a constitutionally desegregated system, but this is not an inflexible requirement as seen in the considerable variation present in the scheme. The time or distance (a maximum of approximately ten miles) of travel is not so great as to either risk the health of the children or significantly impinge on the educational process.[12] The evidence establishes that the cost of implementation would be neither prohibitive nor unreasonable.[13]

Even if the cost were as great as generally alleged by the School Board, the cost of desegregating the schools of the District is not a valid and legal argument against desegregation. The cost of implementing a plan for desegregation should, of course, be taken into consideration if there are two or more acceptable alternate plans which meet constitutional requirements, and the one with the least expense to implement and which meets these require-

ments would, no doubt, be approved over others which also meet the constitutional requirements but require an excessive cost. The court encounters no such difficulty here for only one plan meeting constitutional requirements is before the court. The Defendant School Board has presented no plan for the further desegregation of the Oklahoma City Public School System and it has in turn rejected a proposal by the Department of Health, Education, and Welfare, the Consultants' Plan, and the Plaintiffs' Plan. It has not considered presenting any alternatives to the present plan. The Board simply prefers to continue with the plan currently being implemented. Its policy is designed to protect the "neighborhood schools" and to keep desegregation on a voluntary basis.[14] It rationalizes its intransigence on the constitutionally unsound basis that public opinion is opposed to any further desegregation.[15]

This court has never ordered a single child to be bused and does not intend to do so. Busing of children to attend the public schools in the Oklahoma City District is neither new nor novel. Thousands of students are bused daily in the District and as a matter of fact, throughout the state. Part of the cost of busing pupils in this state is reimbursed to the several districts by the State of Oklahoma when the children so bused live one and one-half miles or more from their assigned school.[16]

Bus transportation as a means to eliminate segregation may be validly employed. Although not specifically relied upon by the Defendant School Board, the court should observe that the law enacted by the 1970 Oklahoma State Legislature, Title 70 O.S.A. § 1210.202, which provides:

> "No pupil shall be assigned, transferred, or otherwise compelled to attend any school on account of race, creed, color or national origin; and no school district or other authority shall seek to achieve racial balance or overcome racial imbalance by transferring or transporting pupils from one school to another within a

> district, or from one school district to another; provided, that nothing contained in this section shall prevent the voluntary transfer of pupils to schools in which their race is in the minority, or other transfers not inconsistent with the provisions of this act,"

is no obstacle to the performance of its constitutional duty by the School Board. A similar statute in North Carolina was held invalid as preventing implementation of desegregation plans required by the Fourteenth Amendment. *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, decided April 20, 1971.

This litigation has been frustratingly interminable, not because of insuperable difficulties of implementation of the commands of the Supreme Court of the United States and the Constitution of the United States, but because of the unpardonable recalcitrance of the Defendant Board and the Superintendent of Schools to come forward with a constitutional plan for the desegregation of the schools of this District. The courts have consistently stated in case after case that regardless of the method used by a school board, whether it be freedom of choice, geographic zoning, pairing, or any other method, they may not continue the operation of a dual system of schools. The methods which a school board is bound to consider to bring about a desegregated school system have, to a great extent, been ignored by the Defendant School Board. The burden has been upon the School Board to erase the racial identity of the schools, and this the Board has failed to do. The court, bearing in mind the rationale that a segregated school is inherently unequal and recognizing further that those students who have been and are being subjected to segregated education in the public schools are, regardless of race, having thrust upon them educational infirmities which are constitutionally impermissible, cannot and will not tolerate further delay.

V

SUMMARY

THE COURT THEREFORE CONCLUDES:

1. A dual system has been and is now being maintained by the Defendant School Board.

2. The Defendant School Board has totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own.

3. The current operational plans of the School Board for the senior and junior highschools, as well as the elementary schools, are in essence "freedom of choice" plans which do not effectively convert the dual system to a unitary system.

4. The Defendant School Board has not sought to achieve the greatest possible degree of actual desegregation of schools.

5. In the Oklahoma City School System, with its history of state-imposed segregation, the presumption is against the great number of schools that are substantially disproportionate in their racial composition, and the School Board has failed to establish or illustrate that the racial composition of such schools is not the result of present or past discriminatory action on its part.

6. The court's order of January 16, 1970, approving the "COMPREHENSIVE PLAN FOR COMPLETE DESEGREGATION OF JUNIOR AND SENIOR HIGHSCHOOLS IN THE OKLAHOMA CITY PUBLIC SCHOOLS AFTER THE 1969-70 SCHOOL YEAR" and subsequent orders relating thereto, should be vacated and set aside.

7. The Plaintiffs' Plan would, if adopted and implemented in good faith, create a unitary system.

8. The jurisdiction of this court in this case has been and is continuous until it is clear that disestablishment of the dual system is complete.

These conclusory findings are not by way of limitation to findings previously made during the course of this memorandum, but are deemed to be supplemental thereto.

VI
CONCLUSIONS OF LAW

The Conclusions of Law reached by the court as enunciated in this memorandum have been based upon the following authorities:

1. Racially restrictive covenants are prohibited and violative of the Fourteenth Amendment. *Shelley* v. *Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

2. It is not improper to consider race in disestablishing segregated schools. The racial composition of the whole School System may be used as a starting point in shaping a remedy to correct past constitutional violations. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

3. Plaintiffs are entitled to a decree requiring the reasonably immediate conversion of the Oklahoma City Public Schools into a unitary school system. *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19 (1969); *Northcross* v. *Board of Education of Memphis*, 397 U.S. 232, 90 S.Ct. 891, 25 L.Ed.2d 246 (1970); *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477 (1970).

4. The Defendant School Board has an affirmative duty to convert to a unitary school system in which racial discrimination would be eliminated root and branch. *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 437, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

5. Transportation is a permissible tool for achieving integration. *Swann* v. *Charlotte-Mecklenburg Board of Education*, *supra*.

6. If school authorities fail in their affirmative obligations under the Constitution, judicial authority may be invoked and the scope of a district court's equitable power to remedy past wrongs is broad providing a practical flexibility in shaping remedies. *Brown* v. *Board of Education*, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1080 (1954); *Green* v. *County School Board of New Kent County, supra.*

7. It is the continuing duty of the district court to retain jurisdiction over the case until it is clear that the constitutional requirements have been achieved. *Raney* v. *Board of Education*, 391 U.S. 443, 449 (1968).

8. In order for a freedom of choice concept to be a valid remedial measure, it must be effective. *Green* v. *County School Board of New Kent County, supra.*

9. No procedure, plan, or method will legalize state-maintained segregation. The constitutional test of a plan is whether or not it gets rid of segregation in the public schools and does it "now." *Green* v. *County School Board of New Kent County, supra; Monroe* v. *Jackson*, 391 U.S. 450, 88 S.Ct. 1700, 20 L.Ed.2d 733.

10. The cost of desegregating a school system is not a valid argument against the constitutional mandate to desegregate. *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 84 S.Ct. 1226 (1964); *United States* v. *Cook County, Illinois*, 404 F.2d 1125 (CA 7 1968).

11. The fact that public opinion may oppose desegregation of the public schools is not a valid reason for failure to comply with the Constitution. *Green* v. *County School Board of New Kent County, supra; Monroe* v. *Jackson, supra.*

12. Intercultural exchanges do not meet constitutional requirements for desegregation. *Hilson* v. *Ouzts*, 421 F.2d 632 (CA 5 1970), and plans for joint sharing of subject matter by students of racially impacted schools and ad-

jacent schools are not a substitute for disestablishing a dual system. *Hightower* v. *West*, 430 F.2d 552 (CA 5 1970). Part-time desegregation does not comply with mandate that school districts begin immediately to operate as unitary school systems. *United States* v. *Board of Education of Baldwin County*, 423 F.2d 1013 (CA 5 1970); *Bevins* v. *Bibb County Board of Education*, 424 F.2d 97 (CA 5 1970).

VII

ORDER

For the reasons stated in the foregoing memorandum of the court and deeming it proper so to do, IT IS ADJUDGED, ORDERED AND DECREED:

1. The court's order of January 16, 1970, approving the "COMPREHENSIVE PLAN FOR COMPLETE DESEGREGATION OF THE SENIOR AND JUNIOR HIGH-SCHOOLS OF THE OKLAHOMA CITY PUBLIC SCHOOL SYSTEM AFTER THE 1969-70 SCHOOL YEAR" and any subsequent order relating thereto are hereby vacated and set aside.

2. The Defendant School Board and the individual members thereof, both present and future, together with the Superintendent of Schools, shall implement and place into effect beginning with the school year 1972-1973 A NEW PLAN OF UNIFICATION FOR THE OKLAHOMA CITY PUBLIC SCHOOL SYSTEM which embodies the principles and suggestions contained in the Plaintiffs' Plan attached hereto and incorporated herein by reference. The court specifically approves the plan for the senior high-schools, junior highschools, the first alternate plan for the elementary schools, and the plan for the Star-Spencer-Dunjee area.

3. The Defendant School Board shall not alter or deviate from the New Plan without the prior approval and permission of the court. If the Defendant is uncertain concerning the meaning or intent of the plan, it should apply

to the court for interpretation and clarification. It is not intended that the school authorities be placed in a "strait jacket" in the administration of the plan, but it is essential that the court be informed of any proposed departure from the sanctioned program. The court is committed to the principles of the plan, but is not inflexible concerning the details. Accordingly the School Board may appropriately consider whether to change to a 5-3-4 grade structure or continue with the present 6-3-3 structure; whether 1973 graduating seniors should be permitted to elect to remain and graduate in the school which they have been attending, if different from the new assignments; and other related matters. Any proposed changes by the school authorities should also be referred to the Biracial Committee constituted by order of this court dated December 3, 1971, for comment and recommendation to the court. The Biracial Committee will also be regularly advised of the progress being made in the implementation of the plan.

4. Some special phase-in programs must be initiated in the spring of 1972. Junior and senior high students and teachers should go to their new school assignments in April or May for special orientation sessions. This will enable scheduling and enrollment problems to be anticipated and rectified. Elementary school students during the spring of 1972 should be introduced to their new assignments and so far as possible should meet with their next year's teachers.

5. It is further provided that this order is binding upon the Defendant School Board, its members, agents, servants, employees, present and future, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. Rule 65(b), Federal Rules of Civil Procedure. Any attempt to hinder, harass, intimidate, or interfere with the School Board, its members, agents, servants, or employees in execution of this order shall be reported to

the Department of Justice through the United States Attorney for the Western District of Oklahoma, Mr. William R. Burkett, Room 4434 Federal Courthouse Building, Oklahoma City, Oklahoma, telephone number 231-4247, for appropriate proceedings to safeguard federally protected rights and activities and to prevent obstruction of this order of the court. See 18 U.S.C. § 245; 18 U.S.C. § 401; 18 U.S.C. § 1509; and 42 U.S.C. § 2000(h).[17]

6. Jurisdiction is retained by the court for all further appropriate orders.

DATED THIS 1st DAY OF FEBRUARY, 1972.

s/ Luther Bohanon
UNITED STATES DISTRICT JUDGE

FOOTNOTES

[1]For prior decisions in this case, see *Robert L. Dowell et al* v. *School Board of the Oklahoma City Public Schools*, 219 F.Supp. 427 (1963); *Robert L. Dowell et al* v. *School Board of Oklahoma City Public Schools*, 244 F.Supp. 971 (1965); *Robert L. Dowell* v. *Board of Education of the Oklahoma City Public Schools*, 307 F.Supp. 583 (1970).

It should also be noted, perhaps, that on August 21, 1970, this court entered an order, on its own motion, closing this case. The Plaintiffs immediately protested and subsequently on May 3, 1971, this court vacated its earlier order. In making the August 1970 order, the court considered it desirable to have a cooling period to see how the plan it had approved would work and to await further clarification of desegregation guidelines by the Supreme Court anticipated from the observation of the Chief Jutice in *Northcross* v. *Board of Education of Memphis, Tennessee, City Schools*, 397 U.S. 232 (1970), that there were still practical problems to be determined. In addition, it had been suggested to the court that HEW wished to participate in further desegregation proceedings but would not intervene in a private suit. In short, the court thought it was taking the proper action and the schools were permitted to operate during the 1970-1971 school year without the stress of litigation and the Supreme Court did on April 20, 1971, hand down its important decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1. It is clear, however, that this court was required to retain jurisdiction to evaluate the plan in practice and to see that state imposed segregation was completely removed. *Green* v. *County School Board of New Kent County, supra.* In *Raney* v. *Board of Education*, 391 U.S. 443, 449 (1968), the Supreme Court in a similar situation declared:

> "Dismissal will ordinarily be inconsistent with the responsibility imposed on the district courts by *Brown II*. 349 U.S., at 299-301. In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved. We agree with the observation of another panel of judges of the Court of Appeals for the Eighth Circuit in another case that the district courts 'should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved.' *Kelley* v. *Altheimer*, 378 F.2d 483, 489. See also *Kemp* v. *Beasley*, 389 F.2d 178."

Indeed, the Court of Appeals has already judicially found that this court should retain jurisdiction in this case until all unconstitutional practices in the system are eliminated. *Board of Education of Oklahoma City Public Schools* v. *Dowell*, 375 F.2d 158, 168 (CA 10 1967).

[APPENDIX]

[2]These are fully integrated special education facilities which need not be involved in any further plan for desegregation:

1. Orchard Park (2-6)--Elementary school for handicapped children
2. Carver (7-12)--Secondary school for handicapped children
3. Adult Day (9-12) For pregnant and married girls
4. Washington (8-12)--For children who are disciplinary problems
5. Area Vocational-Technical Center

[3]Schools at least 90 per cent predominantly white or Negro.

A. ELEMENTARY SCHOOLS

K-6

Schools of 10% or less black	%white	5% or less black	Schools of 10% or less white	%black	5% or less white
Adams	100.0	x	Creston Hills	100.0	x
Arthur	100.0	x	Culbertson	100.0	x
Bodine	98.8	x	Dewey	99.2	x
Britton	99.5	x	Dunbar	98.3	x
Buchanan	99.6	x	Edison	100.0	x
Burbank	97.8	x	Edwards	99.7	x
Cleveland	92.7		Garden Oaks	100.0	x
Coolidge	100.0	x	Green Pastures	99.6	x
Davis	100.0	x	Harmony	99.7	x
Emerson	91.1		Lincoln	99.1	x
Eugene Field	99.7	x	Longfellow	99.3	x
Fillmore	100.0	x	Page	100.0	x
Garfield	99.3	x	Parker	99.7	x
Gatewood	96.4	x	Polk	97.8	x
Harrison	100.0	x	Truman	100.0	x
Hawthorne	100.0	x	Woodson	100.0	x
Hays	99.5	x			
Henry	100.0	x	TOTAL	16 SCHOOLS	16 SCHOOLS
Heronville	100.0	x			
Hillcrest	100.0	x			
Johnson	90.9				
Kaiser	99.5	x			
Lafayette	100.0	x			
Lee	99.0	x			
Linwood	100.0	x			
Lone Star	100.0	x			
Madison	99.0	x			
Mayfair	91.5				
McKinley	100.0	x			
Monroe	99.5	x			
Oakridge	99.8	x			
Parmelee	100.0	x			
Pierce	100.0	x			
Prairie Queen	100.0	x			
Quail Creek	99.5	x			
Rancho	97.2	x			
Ridgeview	99.6	x			
Rockwood	93.4				
Shields Heights	100.0	x			
Southern Hills	99.8	x			
Stonegate	100.0	x			
Star	91.8				
Telstar	98.2	x			
Tyler	92.6				
Valley Brook	100.0	x			
Van Buren	100.0	x			
W. Nichols Hills	99.8	x			
Western Village	99.8	x			
Westwood	96.3	x			

Schools of 10% or less black	5% or less black	Schools of 10% or less white	5% or less white
% white		% black	
Wheeler 94.6			
Willard 94.9			
Willow Brook 97.2			
Wilson 93.4			
TOTAL 53 SCHOOLS	43 SCHOOLS		

TOTAL ELEMENTARY SCHOOLS ---------- 86
Schools where racial composition is
10% or less black or white---------- 69
Schools where racial composition is
5% or less black or white---------- 59

B. JUNIOR HIGHSCHOOLS

7-9

Schools of 10% or less black	5% or less black	Schools of 10% or less white	5% or less white
% white		% black	
Capitol Hill Jr 92.1		Kennedy 100.0	x
Central 93.5		Moon 99.2	x
Hoover 97.3	x		
Jackson 91.0		TOTAL 2 SCHOOLS	2 SCHOOLS
Jefferson 100.0	x		
Roosevelt 100.0	x		
Taft 90.5			
Webster 99.7	x		
TOTAL 8 SCHOOLS	4 SCHOOLS		

TOTAL JUNIOR HIGHSCHOOLS---------- 12
Schools where racial composition is
10% or less black or white--------- 10
Schools where racial composition is
5% or less black or white--------- 6

C. HIGHSCHOOLS

10-12

Schools of 10% or less black	5% or less black	Schools of 10% or less white	5% or less white
% white		% black	
Southeast 98.0	x	Douglass 100.0	x
Capitol Hill Sr 97.4	x		
Grant 99.0	x	TOTAL 1 SCHOOL	1 SCHOOL
Marshall 97.0	x		
TOTAL 4 SCHOOLS	4 SCHOOLS		

TOTAL HIGHSCHOOLS (10-12)---------- 8
Schools where racial composition is
10% or less black or white--------- 5
Schools where racial composition is
5% or less black or white--------- 5

D. OTHER

Dunjee (7-12) 98.2% black

E. SUMMARY

TOTAL SCHOOLS IN SYSTEM EXCEPT SPECIAL SCHOOLS	109
Schools at least 90% predominantly white or Negro	85
Percentage of total	78%

[4]Transcript of Proceedings, December 15, 16, 1969, hearing, pp. 130, 171, 190, 191:

p. 130: "A [Dr. Lillard] I think one thing we need to point out. We sometimes use the term 'requireds' and 'electives.' There are certain minimum requireds to graduate from an Oklahoma City high school as approved by North Central, but after they get the minimum requireds out of the way, then if a student is majority or concentrating in science or social studies, or math, then all of those additional subjects, not just the one year of high school science that is required for graduation, if 'X' School is designated where science will be taught, then those students who are taking their required science will take that year but also those students who are majoring in science, taking chemistry and physics and science seminar, would be returned to that school to take their advance science courses.

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p. 171: "Q [Mr. Walker] I see. So that every student in the city will be transported under your Cluster Plan at some time at least once in his—every year?

"A [Dr. Lillard] On the senior high level?

"Q [Mr. Walker] Yes.

"A [Dr. Lillard] Yes, sir.

• • • • • • •

p. 190: "A [Dr. Lillard] I think the strength of this plan is that you have what would be a better quality instructional program in the process of desegregating the schools. Typically we have only moved pupils to take the same subjects at a different school, and I think this has been one of the complaints of the patrons. They had much rather, if they are going to take the same history, the same English, stay in the local community, but if you can have a concentration of the outstanding teachers for the high schools in one location, we think you will have a better quality instructional program. The boys and girls will be taking whatever this subject might be and I think the other point is that we tend to think of a subject, Mr. Walker, only in terms of the required subject. For example, if we say a certain high school will be a Science Center, then students will

have to take their required biology there. Well, that's only for students who are taking the one year in the required science. Those who are majoring in the science, taking chemistry and physics, advanced biology, botany, physiology, science seminar, all of those electives, will be integrated within that school or in that center. So I think sometimes we fall into the trap of just saying only the required subjects will be, but every required subject has a variety of electives within that school, within that subject matter field.

"Q [Mr. Walker] Now you say that the students will go from school to school under your Cluster Plan. Isn't it possible for the students to exercise their own freedom of choice, so to speak, of classes?

"A Not to the best of my knowledge other than the selection of electives.

"Q Now my question is this. Isn't it possible that say a given student who does not want to go to Douglass can defer taking whatever is offered that is required for him at Douglass until say either the summer or that he can take that course outside the system and then get credit for it within the system?

"A We would want to probably structure our summer school program so that they would reflect the local units as they do now.

"Q Just answer my question, as I stated it. Isn't it possible for a student by his exercise of the freedom of choice of classes, the times that he will take those classes, that he can stay away from Douglass School?

"A I don't think so. Possibly there is some way they could select a subject, but part of our problem now, and it is a problem, is to get students to move four or five miles to take a subject—then I think even fewer would go ten, twelve, fifteen or twenty miles to take a subject.

"Q All right. My question is this, if a student say at Grant has a social science required course to take and it's to be offered the first semester of 1970-'71 and offered at Douglass Center, can he not be filling out his own schedule defer taking that social science course until the summer? Just answer that question.

"A Yes, he could.

"Q Now isn't it possible then for him, if there is a private school in the city, to go to that private school and get that course?

"A If it's an accredited school, accredited by North Central.

"Q Now, so if you have that situation then he can—he can go outside the system perhaps if there is a summer school and get that course outside the system during the summer, can't he?

"A Yes, that would be possible.

"Q And then come back into the school the next year and get credit for that course without ever having to go to Douglass?

"A If it's an accredited high school, yes, sir. By the State Department or North Central rules, then we have to grant credit.

"Q So that a white student if he wants to and is ingenious can find ways to avoid ever coming in contact with Douglass School?

"A I think this is possible for a very small minority on any desegregation plan."

[5]Comparative study of schools before and after Cluster Plan:

SCHOOL	DECEMBER 5, 1969 Negro %	SEPTEMBER 10, 1971 Negro %
Rogers (6-9)	21.7	21.6
Capitol Hill Jr.	3.7	7.9
Central	8.4	6.5
Eisenhower	29.6	33.2
Harding	27.7	54.0
Hoover	.5	2.7
Jackson	1.1	9.0
Jefferson	.1	.0
Kennedy	99.8	100.0
Moon	99.4	99.2
Roosevelt	.0	.0
Taft	14.9	9.5
Webster	.2	.3
Dunjee (7-12)	99.9	98.2
Northwest Classen	11.5	12.2
Southeast	.2	.2
Star Spencer	20.8	22.3
Capitol Hill Sr.	1.4	2.6
Classen	30.1	34.5
Douglass	99.6	100.0
Grant	.1	.1
Marshall	1.4	3.0
Northeast	41.6	65.6

[6]Transcript of Hearing, September 21, 1971, p. 129:

"Q [Mr. Walker] But in terms of classes, Doctor, you have no plans to integrate for every day in the year every class period in the day the actual learning experiences of those youngsters in all of the schools of the junior high level?

"A [Dr. Lillard] No, other than described in our activities report."

[7]Edgemere, 14.4% Negro; Horace Mann, 17%; Mark Twain, 23.5%; Nichols Hills, 24.2%; Putnam Heights, 13.1%; Riverside, 25.7%; Ross, 21.9%; Spencer, 25.1%; Stand Watie, 20.8%; Woodson, 21%.

[8]The Consultants' Plan would result in some change in the racial composition of the senior highschools:

ENROLLMENT NOW	ENROLLMENT AFTER PLAN	PERCENTAGE BLACK NOW	PERCENTAGE BLACK AFTER PLAN
NORTH CLUSTER			
Marshall: 2049	2243	3 %	10 %
Northeast: 987	1094	65.6%	44 %
Northwest: 2587	2427	12.2%	14.3%
Classen: 870	927	34.5%	29.7%
SOUTH CLUSTER			
Grant: 2047	1951	.0%	5.8%
Capitol Hill: 1998	1859	2.6%	9.3%
Southeast: 1683	1705	.0%	5.7%
Douglass: 1309	1444	100.0%	67.0%

[9]Summary of Highschool Projected Enrollments:

HIGHSCHOOL	CAPACITY	PROJECTED ENROLLMENT	APPROXIMATE RACIAL RATIO
Capitol Hill	2139	2180	20%
Classen	1550	1520	25%
Douglass-Kennedy	2500	2440	30%
Marshall	2232	2340	15%
Northeast	1550	1600	30%
Northwest Classen	2914	2580	20%
Southeast	1674	1625	15%
U. S. Grant	2139	2230	15%

[10]Summary of Junior Highschools Projected Enrollments:

JUNIOR HIGHSCHOOL	CAPACITY	PROJECTED ENROLLMENT	APPROXIMATE RACIAL RATIO
Hoover	1550	1674	20%
Harding	1488-1581	1569	30%
Taft	1302	1333	15%
Central	1581-2108	2162	20%
Eisenhower	1302-1736	1687	30%
Roosevelt	1178-1395	1358	25%
Jefferson	1581-1705	1752	15%
Capitol Hill	1426	1490	20%
Jackson	1178	1167	20%
Webster	992-1023	1354	25%

[11]See Testimony of Dr. Lillard, Transcript, December 9, 1971.

[12]A comparison study of the average distance between the elementary school a pupil attends and the highschool that student would attend under the current plan and the average distance between the same school and the assigned highschool under the Plaintiffs' Plan illustrates the changes would not be extreme or burdensome. There would be some increase in the distance between students and their highschools in only 31 of 82 central Oklahoma City elementary attendance zones. The so-called "neighborhood school concept" would be preserved for 48 of the 82 zones in that the students residing in those zones would attend the highschool they do now. Students in 35 elementary attendance zones would attend different highschools than the one they presently attend. 30 of the 35 zones would be more than ½ mile farther from their new highschool than the one they are presently attending. 4 elementary school zones (Lafayette, Mark Twain, Putnam Heights, and Stand Watie) will, in fact, be closer to the new assignment than the current one. Only 22 elementary school zones would be more than 3 miles farther from their highschool than they are now and only 7 of these would be more than 6 miles farther. See Court's Exhibits 3-10 which were prepared by School Board staff: Exhibit 3—Capitol Hill; Exhibit 4—Southeast; Exhibit 5—Douglass; Exhibit 6—Grant; Exhibit 7—Northwest; Exhibit 8—Northeast; Exhibit 9—Classen; Exhibit 10—John Marshall.

[13]Court's Exhibit No. 1, December 9, 1971, hearing:

"Oklahoma City's school district spends about half as much as the national average on those yellow school buses. That's on the basis of percentage of the district's total budget.

"The total transportation budget for the school system is $756,012 of a $37-million general fund budget, or 2.04 per cent of the total.

"Nationally, school districts average 4.08 per cent and in Oklahoma districts average 3.96 per cent of their total general fund budget for bus transportation, according to Allen Williams, director of pupil transportation services for the 70,000-pupil district that covers nearly 200 square miles.

"The district now owns 71 buses, Williams said. This includes 12 new ones on the road now and 12 more to be delivered November 29. The latest buses cost about $9,500 each and are the larger, 72-passenger variety. Four smaller, 48-passenger buses purchased in December, 1970, cost $8,300 each for hauling physically handicapped and three were specially equipped with hydraulic lifts.

"All told, the district this year uses 166 buses, including 95 that are contracted from private operators. This is less than the total of 175 used last year."

The system now employs 166 buses in the system and in implementing the Plaintiffs' plan would probably need to use approximately 200 buses.

The Board has a reserve in this year's general fund budget of $1,900,000. $200,000 has been allocated in the general fund budget for the "Opening Doors Program" which could be diverted to implementation of the new plan. The Board also has approximately $5,700,000 worth of bond authority for new construction. Testimony of Dr. Lillard, December 9, 1971, Transcript, pp. 60-62, 72.

[14]See Testimony of Superintendent of Schools and Board Members, November 18, 19, and December 9, 1971, Hearings. Two members of the Defendant Board testified that they believed desegregation should only be achieved by voluntary action on the part of the pupil or his parents. The Superintendent of Schools takes the incomprehensible view that the system has been desegregated since 1954 and that a school loses its racial identity when one member of the opposite race is enrolled.

[15]Testimony of Board Member Estes, December 9, 1971, Hearing, Transcript, pp. 93, 94.

[16]The District this year will receive some $196,000 in state aid for transportation. Court's Exhibit No. 1, December 9, 1971, Hearing.

[17]18 U.S.C. § 245:

* * * * * * *

"(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

* * * * * * *

"(2) any person because of his race, color, religion or national origin and because he is or has been—

"(A) enrolling in or attending any public school or public college;

* * * * * * *

"(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

"(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

"(B) affording another person or class of persons opportunity or protection to so participate; or

"(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F),

or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

"shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."

18 U.S.C. § 401:

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

"(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) Misbehavior of any of its officers in their official transactions;

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

18 U.S.C. § 1509:

"Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

42 U.S.C. § 2000(h):

• • • • • • •

"Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention."

December 1, 1971

The Hon. Luther Bohanan
United States District Court
Federal Building
Oklahoma City, Oklahoma

FILED
DEC 3 1971
REX B. HAWKS
Clerk, U. S. District Court
By S. J. BAILEY, Deputy

Rec 12-3-71

Dear Judge Bohanan:

I am submitting herewith a Plan for the Desegregation of the Oklahoma City Public Schools.

To prepare such a plan in less than two weeks was a heavy burden, but I believe that the plan is reasonably accurate and complete.

If a plan such as this is to be implemented, the School Administration will need to examine the plan in detail to decide, for example, whether to change to a 5-3-4 grade structure or to continue with the present 6-3-3 structure. If the later, they must rework the plan, a task they can accomplish much more efficaciously than I.

Once the decision is made as to how to proceed, there are many difficult tasks for the school administration. They will need to make some reassignment of teachers and some changes in school equipment. They will need to prepare new transportation routes, purchase (I presume) new buses or else stagger school hours so that the present buses can make more double runs. They will need to notify parents and children of their new school assignments and for junior and senior high school students prepare student study schedules.

To do all this requires a great deal of planning. Therefore, I recommend that if full implementation is ordered, it be deferred until the beginning of the 1972 school year, but only if Superintendent Lillard is willing to begin some special phase-in programs during the spring term. Junior and Senior High School students and teachers should go to their

new school assignments in April or May for special orientation sessions. This will enable scheduling and enrollment problems to be anticipated and rectified. Perhaps the Court in requiring phase-in programs would be meeting any legal mandate of immediate action.

The plan for elementary schools does not require that all be done at the same time. They can be implemented cluster by cluster. I would recommend for elementary schools that during the spring there be some days scheduled when students will go to their new school assignments, if possible, meeting with their next year's teachers. Elementary school students might go to their new school assignments for five or ten days in the spring. Such programs would not need to take place all on the same days, so that the resources of the administrative staff need not be overtaxed.

Finally, I want to let you know that Dr. Lillard has conscientiously provided me with all of the information requested. He and his staff have diligently carried out your instructions to give me whatever information was needed.

Sincerely yours,

s/ John A. Finger, Jr.
John A. Finger, Jr.

JAF/k
Encl.
cc Dr. Bill Lillard
Ms. Sylvia Drew
Mr. John Walker, Esq.
Mr. J. Harry Thompson, Esq.

"ORIGINAL"
Civil 9452

FILED
DEC 3 1971
REX B. HAWES
Clerk, U. S. District Court
By GLADYS M. JONES
Deputy

received Dec 3-1971

Plaintiff Desegregation Plan for Oklahoma City

Introduction

The plaintiffs assume that the requirement for a desegregation plan is school assignments in which every school enrolls both black and white students; that desegregation means that the enrollment in every school will not be on a racial basis; and that schools can not be racially identifiable. As a beginning, some decision must be made about the number of black and white students to be enrolled in each school. It would be possible and perhaps under some circumstances desirable not to include all of the schools in the district in a plan. It might also prove desirable to enroll different proportions of black and white students in the various schools. In this plan for Oklahoma City, all of the schools have been included and the school enrollments by race approximate those found in the community at large.

There are certain facts which can be deduced once these preliminary decisions have been made. First, the number of black students to be transported can be counted. If the currently all black or majority black schools are to enroll a proportion of black students similar to that found in the community, then the number of black students to be transported can be determined by calculating the number who must attend another school.

The distance that black students are transported depends upon whether all of the schools in the district are

included within the plan. If some distant schools, now all white, are excluded, black students would travel a shorter distance because they would be assigned to a school nearer their home. The amount of transportation would approximately remain more or less the same whether or not one uses a cluster plan or a cultural center plan or a specialized curriculum plan. This is simple to understand because if one looks at the enrollment in all of the schools of the district and each school is desegregated, then the black students must have been transported there if they did not reside in that school's attendance zone.

There are different facts which control the number of white students to be transported. The number of white students transported would be approximately equal to the number of black students transported if all of the black schools remained open and kept the same enrollment. Closing a black school decreases the number of white students transported by 75% of the enrollment of that school; it increases the number of black students transported by 25%.

The distances that white pupils are transported tend to be less than for black pupils because the white pupils usually are not transported from the most distant residential areas. In any busing arrangement in Oklahoma City, three-fourths (¾) of the black students are going to be eligible to ride school buses while one-fourth (¼) of the white students will be eligible to ride buses. If these proportions were translated into years, every white pupil might ride a bus for three of the 12 grades and every black pupil for nine of the 12 grades.

An actual desegregation plan would produce results that approximate these ratios but in actuality, some of the children whose school assignment will be changed can walk to their new assignment while others are already riding buses and the only change is the destination of the bus.

Plaintiffs are certainly aware of the busing controversy. They wish to point out that while most of the objection is coming from the white community, it is the black community that must bear the larger burden, if that is what it is, of a plan which truly desegregates the schools.

Amidst the controversy over busing, one seldom hears the community values to be attained from desegregation. Children need to learn about the kind of world that they really live in. They need to learn the give and take of conflicting values and perspectives. Black children especially need to know that they are members of the total community so that they can grow and develop without a warped and distorted self-concept. While plaintiffs know full well that desegregation will not be easy or harmonious, they believe that in the long run the community will be benefited.

A major problem in the design of a desegregation plan is in treating all persons equitably or at least equally inequitably. Unless all areas of a city are treated in the same way, people may avoid living in some areas of the city, thus causing resegregation to occur.

A method of preventing resegregation would be to use a grade assignment plan. With a grade assignment plan all of the students at particular grade levels, for example grades 5, 6, 7, might go to the previously all black schools. No particular group or neighborhood is singled out, everyone is included. Under a grade assignment plan black children at some grade levels (in the example grades 1-4 and 8-12) would be attending the previously white schools and white children (grades 5-7) the previously black schools. While zoning has been recommended in the plaintiffs plan for junior and senior high schools because such a plan requires less busing, the community should be alert to the possibilities of resegregation and be prepared to take corrective action.

[APPENDIX]

Plaintiffs Plan for Senior High Schools

Plaintiffs propose to desegregate the senior high schools by establishing new attendance zones for each school. Because there is not a map available which shows the actual home location of students by race, the proposed plan uses an elementary school feeder system; that is, students are assigned to a high school based on the elementary school attendance zone in which their home is located. As explained in the previous section, a feeder system for schools has some disadvantages because it may establish preferential housing patterns and thus lead to resegregation. However, usually the attendance zones for junior and senior high schools are of sufficient size to not bring about this problem. However, if the school board wished to assure that resegregation will not take place, they would adopt a different procedure. That procedure would use a grade assignment plan. For example, Douglas and Northeast would become 12th grade centers and all students would attend those schools for their last high school year. Plaintiffs propose it as an alternative. However, the recommended plan follows.

The normal capacity of the high schools excluding Dungee in Oklahoma City is 17,081. With portables the capacity is 18,700. There are 13,982 students currently enrolled in these schools. Our enrollment projections indicate that the high school population will be decreasing in the next few years.

It would be possible to make changes in the high schools. One or more schools might be closed, or the grade structure of the schools might be changed from grades 10-12 to grades 9-12.

The plaintiffs plan for the senior high schools is to convert from a 10-12 grade system to a 9-12 grade system, but the plan is not dependent upon this conversion. The essential element of the recommended plan is the restructuring of high school attendance zones so that each school enrolls both black and white pupils.

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The elementary schools that feed the senior high schools are shown on the following attachments.

SUMMARY OF HIGH SCHOOL PROJECTED ENROLLMENTS

High School	Capacity	Projected Enrollment	Approximate Racial Ratio	Estimated Number of Additional Students Bused
Capitol Hill	2,139	2,180	20%	550
Classen	1,550	1,520	25%	200
Douglas-Kennedy	2,500	2,440	30%	None
Marshall	2,232	2,340	15%	90
Northeast	1,550	1,600	30%	None
Northwest Classen	2,914	2,580	20%	550
Southeast	1,674	1,625	15%	240
U.S. Grant	2,139	2,230	15%	300

Note: The Star Spencer-Dungee schools will be treated in a special section.

CAPITOL HILL HIGH SCHOOL
Capacity—2,139

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
McKinley	0	285
Lafayette	0	263
Lee	5	489
Heronville	0	446
Rancho	8	282
Columbus	61	455
Van Buren	0	324
Garfield	2	296
Arthur	0	661
Garden Oaks	558	0
Creston Hills	383	0
Totals	1,017	3,701

Total	4,718
Projected Senior High School Enrollment	2,180
Estimated increased number of students transported	550

CLASSEN HIGH SCHOOL
Capacity—1,550

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
Lincoln (Part)	350	0
Emerson	15	153
Willard	22	408
Eugene Field	1	392
Gatewood	9	240
Riverside	43	124
Adams	0	842
Harmony (Part)	200	0

Orchard Park	48	85
Wilson	21	295
Dewey (Part)	175	0
Totals	884	2,539

Total 3,423

Projected Senior High School Enrollment 1,520

Estimated amount of increased transportation 200

DOUGLAS-KENNEDY HIGH SCHOOL

Capacity—2,500

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
Pierce	0	375
Tyler	8	100
Rockwood	50	708
Westwood	17	444
Wheeler	31	542
Dunbar	286	5
Oak Ridge	1	441
Valley Brook	0	202
Bodine	9	720
Edwards	306	1
Truman	426	0
Ross	59	211
Shidler	141	231
Totals	1,334	3,980

Total 5,314

Projected Senior High School Enrollment 2,440

Estimated amount of increased transportation None

MARSHALL HIGH SCHOOL

Capacity—2,232

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
Western Village	1	543
Stone Gate	0	673
Sunset	37	263
Quail Creek	2	401
Johnson	42	416
Harrison	0	357
Britton	2	408
Longfellow (Part)	200	
North Highlands	222	344
Nichols Hills	119	372
Ridgeview	3	693
Totals	631	4,842

Total	5,473
Projected Senior High School Enrollment	2,340
Estimated amount of increased transporttaion	90

NORTHEAST HIGH SCHOOL

Capacity—1,550

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
Edgemere	62	376
W. Nichols Hills	1	406
Dewey (Part)	416	5
Polk	569	13
Burbank	8	364
Belle Isle	33	266

Horace Mann		70	341
Lone Star		0	109
	Totals	1,217	2,265
	Total		3,482
Projected Senior High School Enrollment			1,600
Estimated amount of increased transportation			None

NORTHWEST CLASSEN HIGH SCHOOL
Capacity—2,914

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
Longfellow (Part)	378	0
Edison	325	0
Harmony (Part)	500	2
Mark Twain	104	339
Hawthorne	0	455
Mayfair	34	366
Sequoyah	38	339
Putnam Heights	58	385
Monroe	2	407
Cleveland	19	241
Buchanan	2	510
Kaiser	2	417
Madison	4	399
Linwood	0	292
Totals	1,466	4,152
Total		5,618
Projected Senior High School Enrollment		2,580
Estimated amount of increased transportation		550

SOUTHEAST HIGH SCHOOL
Capacity—1,674

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
Southern Hills	1	652
Shields Heights	0	562
Parmalee	0	551
Hayes	4	707
Henry	0	146
Davis	0	361
Woodson	252	0
Page	243	0
Culbertson (Part)	150	0
Totals	550	2,979

Total	3,529
Projected Senior High School Enrollment	1,625
Estimated amount of increased transportation	240

U. S. GRANT HIGH SCHOOL
Capacity—2,139

Enrollment in Elementary Feeder Schools

Feeder Schools	Black	White
Fillmore	0	634
Lincoln (Part)	214	0
Prairie Queen	0	997
Hillcrest	0	907
Coolidge	0	939
Stand Watie	119	454
Culbertson (Part)	403	0
Totals	736	3,931

Total	4,867
Projected Senior High School Enrollment	2,230
Estimated increased number of students transported	300

Junior High Schools

At the junior high level, we propose to change the grade structure from 7-8-9 to 6-7-8. This is in line with a growing trend of establishing junior high school type experiences for 6th grade children. The establishment of these middle or junior high school units should provide an improved educational experience. The junior high schools are desegregated by the establishment of attendance zones for each school. They are described in terms of the elementary school that the child will have attended. On the following pages are shown the junior high or middle schools together with their elementary feeder schools.

Most of the junior high or middle school zones will be somewhat similar to the present attendance zones except that a large number of the black students will be transported to the outlying junior high schools so as to desegregate those schools. Most of the other changes simply involve a reassignment of schools without an appreciable change in the distance a pupil resides from a school.

Moon has been closed and Kennedy converted to a part of the Douglas-Kennedy High School. In one or two instances, Webster for example, there is overcrowding. This might mean that the school superintendent would find it necessary to have some 6th grades in the elementary schools. There are adequate elementary school classrooms available.

The school administration may prefer to continue to operate the schools on a 6-3-3 grade structure rather than a 5-3-4 structure. All of the elements of these plans will accomodate to either structure, although some elementary schools would be over crowded, because there would not always be room to accomodate the black students in the previously white elementary schools.

SUMMARY OF JUNIOR HIGH SCHOOL PROJECTED ENROLLMENTS

(APPENDIX)

Junior High School	Capacity	Projected Enrollment	Approximate Racial Ratio	Estimated Number of Additional Students Bused
Hoover	1,550	1,674	20%	75
Harding	1,488-1,581	1,569	30%	100
Taft	1,302	1,333	15%	175
Central	1,581-2,108	2,162	20%	300-600
Eisenhower	1,302-1,736	1,687	30%	175
Roosevelt	1,178-1,395	1,358	25%	300
Jefferson	1,581-1,705	1,752	15%	250
Capitol Hill	1,426-1,426	1,490	20%	150
Jackson	1,178-1,178	1,167	20%	150
Webster	992-1,023	1,354	25%	250

CAPITOL HILL JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,426

Enrollment in Elementary Feeder Schools

Feeder Schools	Black	White
Bodine (Part)	0	400
Culbertson (Part)	353	0
Lee	5	489
Oakridge	1	441
Ross	59	211
Shidler	141	231
Shields Heights	0	562
Wheeler	31	542
Totals	590	2,876

Total	3,466
Projected Junior High School Enrollment	1,490
Estimated amount of increased transportation	150

CENTRAL JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—2,108

Enrollment in Elementary Feeder Schools

Feeder Schools	Black	White
Emerson	15	153
Eugene Field	1	392
Fillmore (Part)	0	300
Gatewood	9	240
Heronville	0	446
Lafayette	0	263
Lincoln	564	5

McKinley	0	285	
Orchard Park	48	85	
Page	200	0	
Pierce	0	375	
Rancho	8	282	
Riverside	43	124	
Willard	22	408	
Wilson	21	295	
Woodson	252	0	
Totals	1,226	3,753	
Total			5,029
Projected Junior High School Enrollment			2,141
Estimated amount of increased transportation			600

JACKSON JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,178

Enrollment in Elementary Feeder Schools

Feeder Schools	Black	White	
Columbus	61	455	
Harmony	300	0	
Rockwood	50	708	
Stand Watie	119	454	
Tyler	8	100	
Westwood	17	444	
Totals	555	2,161	
Total			2,716
Projected Junior High School Enrollment			1,167
Estimated amount of increased transportation			150

JEFFERSON JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,581

Enrollment in Feeder Elementary Schools

Feeder Schools	Black	White	
Colidge (Part)	0	300	
Fillmore	0	334	
Garden Oaks	558	0	
Hillcrest	0	907	
Parmallee	0	351	
Prairie Queen	0	997	
Southern Hills	1	652	
Totals	559	3,541	
Total			4,082
Projected Junior High School Enrollment			1,752
Estimated amount of increased transportation			250

EISENHOWER JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,302

Enrollment in Elementary Feeder Schools

Feeder School	Black	White	
Britton	2	408	
Harrison	0	357	
Harmony	400	2	
Johnson	42	416	
Lone Star	0	109	
Longfellow	578	4	
Nichols Hills	119	372	
North Highlands	222	344	
Western Village	1	543	
Totals	1,364	2,559	
Total			3,923
Projected Junior High School Enrollment			1,687
Estimated amount of increased transportation			175

[APPENDIX]

HARDING JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,488

Enrollment in Feeder Elementary Schools

Feeder School	Black	White
Belle Isle	33	266
Dewey	591	5
Edgemere	62	376
Hawthorne	0	455
Horace Mann	70	341
Mayfair	34	366
Monroe	2	407
Putnam Heights	58	385
Totals	850	2,601
Total		3,451
Projected Junior High School Enrollment		1,569
Estimated amount of increased transportation		100

HOOVER JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,550

Enrollment in Elementary Feeder Schools

Feeder School	Black	White
Burbank	8	364
Culbertson (Part)	200	0
Polk	569	13
Quail Creek	2	401
Ridgeview	3	693
Stonegate	0	673
Sunset	37	263
West Nichols Hills	1	406
Totals	820	3,076
Total		3,896
Projected Junior High School Enrollment		1,674
Estimated amount of increased transportation		75

ROOSEVELT JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,178

Enrollment in Elementary Feeder Schools

Feeder School	Black	White	
Adams	0	842	
Arthur	0	661	
Coolidge (Part)	0	300	
Edwards	306	1	
Garfield	2	296	
Truman	426		
Van Buren	0	324	
Totals	734	2,424	
Total			3,158
Projected Junior High School Enrollment			1,358
Estimated amount of increased transportation			300

TAFT JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—1,302

Enrollment in Elementary Feeder Schools

Feeder School	Black	White	
Buchanan	2	510	
Cleveland	19	241	
Creston Hills	383		
Kaiser	2	417	
Linwood	0	292	
Madison	4	399	
Mark Twain	104	339	
Sequoyah	38	339	
Totals	552	2,537	
Total			3,089
Projected Junior High School Enrollment			1,333
Estimated amount of increased transportation			175

[APPENDIX]

WEBSTER JUNIOR HIGH SCHOOL

Grades 6-8

Capacity—992

Enrollment in Elementary Feeder Schools

Feeder School	Black	White	
Bodine (Part)	0	300	
Davis	0	361	
Dunbar	286	5	
Edison	325		
Hayes	4	707	
Henry	0	146	
Parmelee	0	209	
Valley Brook	0	202	
Totals	615	2,184	
Total			2,799
Projected Junior High School Enrollment			1,354
Estimated amount of increased transportation			250

Elementary Schools

The plaintiffs offer two different plans for the desegregation of the elementary schools. In the first plan, plaintiffs would use the groupings established by defendants. See defendants' document entitled "Opening Doors to Desegregation—Elementary Desegregation Plan." These groupings would be used to establish clusters within which students would be desegregated using a grade assignment plan. Various grade structures could be used at the discretion of the school department. In fact, the school department might decide to use different grade structures among the various clusters. The plaintiffs' plan only requires that within each cluster, each school have approximately the proportion of black and white students found within the particular cluster. The grade assignments within a cluster might be that one school serve all 5th grade pupils, while the other schools serve all of grades one through four.

Under the plaintiffs' plan the school that is at present all black or majority black, will be the school that becomes the special grade center. Within any one of the clusters, black children will be attending what were previously white schools for four years, while the white children would be attending the previously black schools for one year.

It is proposed that kindergartens be treated as a special case and that parents be allowed a choice for kindergarten attendance. All existing elementary schools will house kindergartens. Allowing parents a choice permits kindergarten children to go to the school in the vicinity of the place where the mother may be working or to walk to kindergarten with other siblings or neighborhood children or to go on a bus with other children who may be going to a different school in their cluster.

The school clusters are shown on the following pages. These show the present estimated enrollments by race, the building capacities, and the estimated amount of trans-

portation required for desegregation. The plan shows the special grade center as grade 5.

The students now enrolled at the previously all black schools will attend grades 1-4 at one of the other schools within his cluster. Some method of assignment will be necessary for the black pupils. The method of assignment might be alphabetical, or by lottery, but probably a geographic assignment will be most feasible. Black students could be assigned to their new schools while they are still enrolled in their old school.

If any school in a cluster is already desegregated because residing within its present attendance zone and enrolled in the school are more than 10% black and less than 35% black, then that school would operate as a school enrolling grades K-5. Schools which appear to meet this condition are underlined on the following listings. We would include within the definition "residing within its present attendance zone," sat*telite* zones such as the housing projects, provided that the distance is not excessive (1½ to 3 miles).

We note that there are instances where a housing project has been treated as a sat*telite* zone, but the students do not go to the school nearest the housing project. The Rockwood district is an example of this. The school administration may find it necessary to restructure attendance zones so that such children go to the nearest school or schools. We have suggested this for Plan II, but it may also be necessary for Plan I.

Group A	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Dewey	591	5	90	360	750	K,5
Quail Creek	2	401	56	242	360	K-4
Stone Gate	0	673	94	405	660	K-4
Sunset	37	263	37	160	390	K-4
Western Village	1	543	76	330	630	K-4
Ridgeview	3	693	97	420	870	K-4
Total	634	2,578			3,660	

Estimated number of children to be transported

Black	White
360	360

Note: The black students enrolled at Sunset appear to be bused to that school from the Creston Hills attendance district. It may be desirable to continue those students in Sunset. As an alternative these children might be reassigned and sent with the other Creston Hills children.

Group B	Present Enrollment K-6 Black	Present Enrollment K-6 White	Estimated Projected Enrollment Excluding Kindergarten Black	Estimated Projected Enrollment Excluding Kindergarten White	Maximum Capacity	Proposed Grades
Longfellow	578	4	85	280	720	K,5
Britton	2	405	75	250	480	K-4
Harrison	0	357	66	210	420	K-4
Lone Star	0	109	20	65	210	K-4
Burbank	8	364	66	220	570	K-4
Belle Isle	33	266	48	160	440	K-4
Johnson	42	416	75	250	660	K-4
Total	663	1,924			3,500	

Estimated number of children to be transported

Black	White
350	280

Note: The black students enrolled at Belle Isle and Johnson appear to be bused to that school. These students can either be reassigned with their home attendance zones or continued in their present assignments.

Group C	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Culbertson	553	0	90	310	900	K,5
Lee	5	489	72	295	690	K-4
Heronville	0	446	65	270	660	K-4
Shields Heights	0	562	85	340	660	K-4
Shidler	141	231	126	208	450	K-6
Lafayette	0	263	40	158	450	K-4
Davis	0	361	55	216	450	K-4
Tyler	8	100	21	100	240	K-3
Total	707	2,452			4,490	

Estimated number of children to be transported

Black	White
330	310

Shidler would be continued as a K-5 school since it is already desegregated.

Group D	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Page	243	0	45	160	690	K,5
Linwood	0	292	60	175	540	K-4
Willard	22	408	85	245	630	K-4
Columbus	61	455	61	455	690	K-5
Total	326	1,155			2,550	

Estimated number of children to be transported

Black	White
145	160

Columbus would be continued as a K-5 school.

Group E	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Dunbar	286	5	45	200	810	K,5
Stand Watie	119	454	119	454	660	K-5
Parmalee	0	551	97	330	690	K-4
Henry	0	146	26	87	300	K-4
McKinley	0	285	48	170	270	K-4
Total	405	1,441			2,730	

Estimated number of children to be transported

Black	White
171	200

Stand Watie to be continued as a K-5 school.

Group F	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Garden Oaks	558	0	85	295	690	K,5
Van Buren	0	324	55	195	390	K-4
Pierce	0	375	65	225	390	K-4
Fillmore	0	634	105	380	900	K-4
Arthur	0	661	110	400	840	K-4
Total	558	1,994			3,210	

Estimated number of children to be transported

Black	White
335	295

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Group G	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Truman	426	0	65	240	750	K,5
Buchanan	2	510	111	310	780	K-4
Mark Twain	104	339	104	339	570	K-5
Rancho	8	282	54	170	540	K-4
Wheeler	31	542	90	325	720	K-4
Total	571	1,673			3,360	

Estimated number of children to be transported

Black	White
255	240

Mark Twain would be continued as a K-5 school.

Group II	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Polk	569	13	80	250	720	K,5
Horace Mann	70	341	70	341	510	K-5
Edgemere	62	376	62	376	540	K-5
Sequoyah	33	339	60	205	570	K-4
Putnam Heights	58	305	50	230	510	K-4
Madison	4	399	110	240	510	K-4
Kaiser	2	417	120	250	660	K-4
Total	803	2,270			4,020	

Estimated number of children to be transported

Black	White
340	250

Horace Mann and Edgemere would be continued as K-5 schools.

Black students at Sequoyah and Putnam Heights are bused in from outside the district. See earlier recommendation.

Group I	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Woodson	252	0	45	160	870	K,5
Rockwood	50	708	130	420	840	K-4
Westwood	17*	444	87	270	570	K-4
Riverside	43	124	43	124	390	K-5
Total	362	1,276			2,670	

Estimated number of children to be transported

Black	White
150	160

Riverside would be continued as a K-5 unit.

Group J	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Lincoln	564	5	85	255	810	K,5
Emerson	15	153	20	90	360	K-4
Wilson	21	295	45	175	420	K-4
Eugene Fields	1	392	85	245	450	K-4
Gatewood	9	240	50	145	330	K-4
Hawthorne	0	455	100	275	600	K-4
Cleveland	19	241	40	145	540	K-4
Total	629	1,781			3,510	

Estimated number of students to be transported

Black	White
340	255

Group K	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Edison	325	0	50	170	450	K,5
Nichols Hills	119	372	119	372	660	K-5
W. Nichols Hills	1	406	75	245	540	K-4
Mayfair	34	366	79	220	510	K-4
Monroe	2	407	75	245	780	K-4
North Highland	222	344	222	344	580	K-5
Total	703	1,895			3,520	

Estimated number of children to be transported

Black	White
195	170

North Highland and Nichols Hills would be continued as K-5 schools.

Group L	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Harmony	700	2	110	430	810	K,5
Coolidge	0	939	130	540	1,080	K-4
Hillcrest	0	907	130	530	960	K-4
Adams	0	842	120	500	900	K-4
Garfield	2	296	40	240	330	K-4
Total	702	2,986			4,080	

Estimated number of children to be transported

Black	White
420	430

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Group M	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Creston Hills	383	0	60	326	690	K,5
Bodine	9	720	80	430	540	K-4
Oak Ridge	1	441	45	265	500	K-4
Valley Brook	0	202	25	120	270	K-4
Ross	59	211	59	211	330	K-5
Hayes	4	707	80	420	870	K-4
Total	456	2,281			3,200	

Estimated number of children to be transported — Black 230 — White 326

Ross would be continued as a K-5 school.

Group O	Present Enrollment K-6 Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Maximum Capacity	Proposed Grades
Orchard Park	48	85	48	85	160	K-5
Edwards	306	1	45	240	540	K,5
Southern Hills	1	652	80	390	790	K-4
Prairie Queen	0	997	100	600	1,290	K-4
Total	355	1,735			2,780	

Estimated number of children to be transported

Black	White
180	240

Orchard Park would continue as a 2-5 grade school or as a K-5 grade school.

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Plan II

In Plan I, plaintiffs propose that those school attendance zones for elementary schools that currently have black enrollments ranging between 10 to 30% be left with their grade structure—K through 5. In Plan II the school administration would define new elementary school attendance zones that would increase the number of schools that would fall within the range of 10 to 30% black and still remain as essentially walk-in schools.

We assume that it is understood that a school does not fall within the definition of 10 to 30% black if black students are being transported to the school from outside the district, although as explained previuosly, some satellite zoning would be acceptable and desirable.

When all of the desegregated schools have been defined, some schools will remain which are majority black and others which are majority white. Under Plan II, plaintiffs propose that these all-black schools be established to serve a restricted number of grades as in Plan I. For example, grades 5 or grade 1, and that all of the children from the majority white schools would go to these clusters for that specified grade or grades. It follows, of course, that the children from the black schools would be attending the white schools for the other grades. For example, all of the children might be attending the first and second grades in the previously all black schools while all of the children in grades three through five would be attending the previously all white schools.

We would expect that the school administration would select the schools to be paired under this grade assignment plan so that the paired schools are either as geographically close together as possible or as accessible by road as possible, but we have prepared tentative groupings.

The kindergarten options would be the same under Plan II as Plan I.

UND VERTICAL

The plaintiffs have not had a map of the school district showing the home location of students by race. Thus, it is difficult to restructure elementary school attendance zones. A partial documentation of Plan II has been prepared. First is shown the attendance zones that we believe can be restructured to bring about desegregation, but our suggestions are at best only roughly schematic.

The advantage of Plan II is that it decreases the number of students to be bused. Some schools are located so that a fairly compact attendance zone can be drawn that extends into both white and black residential areas. A School in a white residential area might have a black residential area only a short distance away, but even if it were 1½ to 2 miles the transportation required would be simple and direct. It follows that a black school might have a white residential area a short distance away and that the white residential area might be zoned into the black school.

There are problems connected with the restructuring of such attendance zones. The establishment of such zones may create a disequilibrium leading to resegregation if the zoning results in preferential residential areas.

One of the end results of a desegregation plan should be that every place in the city be equally desirable as a residential area in so far as schools are concerned. When it is suspected that rezoning will result in disequilibrium the remedy is to use a grade assignment plan.

In some cases where we have suggested desegregation by rezoning it will probably prove desirable to use a grade assignment plan for some school groups.

Plan II for Elementary Schools should be adopted only after the school administration has actually drawn the required detail maps, considered the possibilities of disequalibrium, evaluated the effectiveness of grade assignments for some schools, and then compared Plan I with Plan II.

Such an evaluation is not time consuming nor costly when done by school personnel thoroughly familiar with the city's demographic characteristics.

PLAN II

Elementary School Clusters

IIA

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Creston Hills	383	0	55	355	K,5
Ross	0	211	29	120	K-4
Bodine	9	720	108	430	K-4
Oakridge	1	441	61	265	K-4
Valley Brook	0	202	27	120	K-4
Hayes	4	107	19	65	K-4
Total	397	1,681			

Estimated amount of increased transportation

Black	White
244	355

COPY BOUNDARIES

PLAN II

Elementary School Clusters

IIB

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Culbertson	402	0	60	310	K,5
Lee	5	353	40	210	K-4
Davis	0	489	56	293	K-4
Lafayatte	0	263	30	158	K-4
Shields Heights	0	562	64	337	K-4
Heronville	0	446	51	268	K-4
Total	407	2,113			

Estimated amount of increased transportation

Black	White
241	310

PLAN II

Elementary School Clusters

IIC

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Edwards	306	1	50	240	K,5
Prairie Queen	0	997	115	600	K-4
Southern Hills	1	652	70	390	K-4
Total	307	1,650			

Estimated amount of increased transportation

Black	White
185	240

PLAN II

Elementary School Clusters

IID

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Dunbar	286	5	45	270	K,5
Stand Watie	0	547	55	330	K-4
Parmelee	0	551	55	330	K-4
Columbus	0	350	35	210	K-4
Henry	0	146	15	90	K-4
McKinley	0	285	28	170	K-4
Total	286	1,844			

Estimated amount of increased transportation

Black	White
176	270

PLAN II

Elementary School Clusters

IIE

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Harmony	700	0	110	440	K,5
Garfield	2	296	42	180	K-4
Hillcrest	0	907	130	540	K-4
Coolidge	0	939	135	560	K-4
Adams	0	842	120	520	K-4
Total	702	2,984			

Estimated amount of increased transportation

Black	White
427	440

COPY BOUND VERTICAL

PLAN II

Elementary School Clusters

IIF

School Name		K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Garden Oaks		558	0	85	350	K,5
Arthur		0	661	89	395	K-4
Ridgeview		3	693	93	410	K-4
Fillmore		0	634	84	380	K-4
Van Buren		0	324	45	190	K-4
	Total	561	2,312			

Estimated amount of increased transportation

Black	White
311	350

PLAN II

Elementary School Clusters

IIG

School Name	K-6 Enrollment in District After Zone Change Black	K-6 Enrollment in District After Zone Change White	Estimated Projected Enrollment Excluding Kindergarten Black	Estimated Projected Enrollment Excluding Kindergarten White	Grade Structure
Longfellow	478	4	85	280	K,5
Belle Isle	33	266	50	160	K-4
Johnson	42	416	65	250	K-4
Burbank	8	364	65	218	K-4
Lone Star	0	109	23	68	K-4
Harrison	0	357	65	215	K-4
Britton	2	408	75	245	K-4
Total	563	1,924			

Estimated amount of increased transportation

Black	White
258	280

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PLAN II

Elementary School Clusters

IIH

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Truman	426	0	65	240	K,5
Hawthorne	0	455	70	270	K-4
Buchanan	2	510	79	305	K-4
Linwood	0	292	45	174	K-4
Rancho	8	282	43	169	K-4
Columbus	0	165	25	100	K-4
Total	436	1,709			

Estimated amount of increased transportation

Black	White
262	240

PLAN II

Elementary School Clusters

III

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Edison	325	0	50	230	K,5
Western Vill	1	543	100	325	K-4
West Nichols Hills	1	406	75	250	K-4
Mayfair	34	366	100	220	K-4
Monroe	2	262	48	160	K-4
Total	363	1,577			

Estimated amount of increased transportation

Black	White
285	230

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PLAN II

Elementary School Clusters

IIJ

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Polk	569	13	95	350	K,5
Sunset	37	263	36	160	K-4
Sequoyah	38	115	20	95	K-4
Quail Creek	2	401	56	250	K-4
Madison	4	399	55	240	K-4
Stonegate	0	673	93	405	K-4
Kaiser	2	417	58	250	K-4
Total	652	2,281			

Estimated amount of increased transportation

Black	White
280	350

PLAN II

Elementary School Clusters

IIK

School Name	K-6 Enrollment in District After Zone Change Black	White	Estimated Projected Enrollment Excluding Kindergarten Black	White	Grade Structure
Woodson	169	0	33	120	K,5
Cleveland	19	180	30	110	K-4
Tyler	8	100	16	60	K-4
Westwood	17	444	74	270	K-4
Total	213	724			

Estimated amount of increased transportation

Black	White
76	120

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[APPENDIX]

PLAN II

List of Schools Desegregated by Restructuring Attendance Zones Including Sattelite Zonings

In this listing restructuring of attendance zones are described in terms of changes in numbers of students. In some instances these changes consist of reassignment of students residing in housing projects. In others, it may not be possible to draw one connected zone. There are some instances where it might prove more desirable to use a grade assignment plan. For example, a new single attendance zone for Dewey, Putnam Heights and Edgemere might be defined by combining the individual zones described below for these three schools. Each school might then serve only specific grades.

School	Original Enrollment Black	White	Instructions for Restructuring Attendance Zones	New Enrollment Black	White
Shidler	141	231	69 white students from Wheeler to Shidler	141	300
Riverside	43	124	87 black students from Page to Riverside 136 white students from Lee to Riverside	130	260
Page	243	0	87 black students from Page to Riverside 83 black students from Woodson to Page 200 white students from Willard to Page 75 white students from Emerson to Page	239	275
Willard	22	408	188 black students from Lincoln to Willard 200 white students from Willard to Page 212 white students from Hawthorne to Willard	210	420
Edgemere	62	376	118 black students from Dewey to Edgemere 150 white students from Edgemere to Lincoln 45 white students from Putnam Heights to Edgemere 105 white students from Gatewood to Edgemere	180	376
Dewey	591	5	122 black students from Dewey to Wilson 112 black students from Dewey to Putnam Heights 118 black students from Dewey to Edgemere 295 white students from Putnam Heights	239	300

School	Original Enrollment Black	White	Instructions for Restructuring Attendance Zones	New Enrollment Black	White
Putnam Heights	58	385	112 black students from Dewey to Putnam Heights 45 white students from Putnam Heights to Edgemere 295 white students from Putnam Heights to Dewey 140 white students from Sequoyah to Putnam Heights 145 white students from Monroe to Putnam Heights	170	330
Horace Mann	70	341	100 black students from Longfellow to Horace Mann	170	341
Emerson	15	153	108 black students from Lincoln to Emerson 75 white students from Emerson to Page 72 white students from Eugene Fields to Emerson	123	160
Eugene Fields	1	392	91 black students from Culbertson to Eugene Fields 58 black students from Lincoln to Eugene Fields 100 white students from Eugene Fields to Lincoln 72 white students from Eugene Fields to Emerson 80 white students from Hawthorne to Eugene Fields		
Lincoln	564	5	150 white students from Wilson to Lincoln 150 white students from Edgemere to Lincoln 100 white students from Eugene Fields to Lincoln 188 black students from Lincoln to Willard 108 black students from Lincoln to Emerson 58 black students from Lincoln to Eugene Fields 17 black students from Lincoln to Wilson 41 black students from Lincoln to Gatewood	150	405
Wilson	21	295	122 black students from Dewey to Wilson 17 black students from Lincoln to Wilson 60 white students from Gatewood to Wilson	150	355
Gatewood	9	240	41 black students from Lincoln to Gatewood 60 black students from Culbertson to Gatewood 60 white students from Gatewood to Wilson 61 white students from Cleveland to Gatewood 84 white students from Sequoyah to Gatewood 105 white students from Gatewood to Edgemere	110	265

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PLAN II

List of Schools Desegregated by Restructuring Attendance Zones
Including Sattelite Zonings

School	Original Enrollment Black	White	Instructions for Restructuring Attendance Zones	New Enrollment Black	White
Orchard Park	48	85	No Change	48	85
North Highland	222	344	No Change	222	344
Nichols Hills	119	372	No Change	119	372
Mark Twain	104	339	No Change	104	339
Rockwood	50	708	61 black students from Columbus to Rockwood 41 black students from Stand Watie to Rockwood 60 white students from Rockwood to Columbus 40 white students from Rockwood to Stand Watie		
Wheeler	31	542	59 black students from Ross to Wheeler	90	542
Pierce	0	375	78 black students from Stand Watie to Pierce 53 white students from Pierce to Stand Watie	78	322

Plan for Star-Spencer--Dunjee Area

A special plan is proposed for the desegregation of the area served by the Star-Spencer and Dunjee High Schools.

I. The Parker school is not shown on the *Map of the Oklahoma City Public Schools.* It is assumed to be a part of the Dunjee school. We propose that it be discontinued as a regular elementary school and that the students residing in its attendance zone be assigned to Star, Willow Brook and Telstar. There are not sufficient spaces in those schools to accommodate all the pupils. It is therefore proposed that the grade structure in the three schools be changed from K-6 to K-4.

II. Green Pastures would be desegregated by restructuring its attendance zone. The *Map* does not show an attendance zone for Green Pastures. If the School Board can not or does not choose to define desegregated attendance zones, Spencer, Green Pastures and Star could use a grade assignment plan. For example, Green Pastures might be a Kindergarten Center; Star a Grade 1-2 Center and Spencer a Grade 3-4 Center. Estimated enrollments might be as follows:

	Black	White	Grades
Green Pastures	100	150	K-4 or K
Spencer	190	280	K-4 or 1-2
Star	210	340	K-4 or 3-4
Telstar	175	355	K-4
Willow Brook	175	325	K-4

III. Parker and perhaps some facilities in Dunjee would become a fifth and sixth grade center and all students would attend that school for these grades. It is our understanding that Arcadia now attends the Middle School at Rogers. They presumably would attend Parker for grade 5 and 6, but that would not be required.

IV. All students in the District would attend Rogers in Grades 7-9 and Star-Spencer in Grades 10-12.

APPENDIX B

FILED
United States Court of Appeals
Tenth Circuit
AUG 4 1972
HOWARD K. PHILLIPS
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 72-1146—JULY 1972 TERM

ROBERT L. DOWELL, etc., et al, Plaintiffs-Appellees, v. THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, etc., et al, Defendants-Appellants.	Appeal From The United States District Court For The Western District of Oklahoma

J. Harry Johnson, Oklahoma City, Oklahoma, for Appellants.

John W. Walker, of Walker, Kaplan & Mays, P.A., Little Rock, Arkansas (Archibald K. Hill, Oklahoma City, Oklahoma, and Jack Greenberg, James M. Nabrit III, and R. Sylvia Drew, New York, New York, with him on the Brief), for Appelles.

Before LEWIS, Chief Judge, BREITENSTEIN and SETH, Circuit Judges.

PER CURIAM.

Approximately ten years ago, proceedings were commenced to desegregate the public schools in Oklahoma City. The schools were then found to be operated as a dual school system remaining after the abolition of the Oklahoma law requiring such a system. The cases which have been decided during the intervening years include Dowell v. Board of Education, 219 F.Supp. 427; Dowell v. School Board, 244 F.Supp. 971; Dowell v. School Board, 307 F. Supp. 583; Board of Education v. Dowell, 375 F.2d 158; Dowell v. Board of Education, 430 F.2d 865; Dowell v. Board of Education, — F.2d —, Tenth Circuit, August 30, 1971.

In the last proceedings concerning the Oklahoma City public schools in this court, we ordered that the trial court hold hearings to determine the effectiveness of the plans which had theretofore been approved for the junior and senior high schools, and also to consider the effectiveness of a plan for the elementary schools. The trial court was directed to make whatever modifications that appeared necessary or to adopt additional plans to accomplish the desegregation of the Oklahoma City public schools.

The trial court held extensive hearings on the indicated subjects and found that the Cluster Plan which had theretofore been approved by the trial court and by this court was totally ineffective as it had been administered by the school board. The trial court adopted a new plan for the desegregation of the junior and senior high schools and elementary schools, and ordered it put into effect. The school board has taken this appeal from the trial court's order.

The positions taken by the parties in the trial court were briefly as follows: The school board asserted that the Cluster Plan, as it was being administered, was effective and also sufficient to meet the constitutional requirements. The board refused to come forth with any substantially different plans or with any substantial modifications of the Cluster Plan. In short, the school board stood on the plan that was then in effect as to the junior and senior high schools, and a plan for the elementary schools which provided for some part-time interchange of students. The school board also recommended a consultant to study the desegregation problem in the Oklahoma City schools and to make a report for the consideration of the court. This expert was appointed by the court, together with an additional consultant also recommended by the school board. These experts presented their report. This report was opposed by the school board. The plan was considered by the court together with other suggestions.

The plaintiffs presented to the trial court a detailed plan for desegregation which had been prepared by a consultant engaged by them, Dr. John A. Finger. This plan was ultimately approved by the court and incorporated in its order for desegregation. The plan became known as the Finger Plan.

The court in its memorandum carefully considered and evaluated the effectiveness of the Cluster Plan theretofore in effect and indicated that in its opinion the school board had made unauthorized changes in the plan and had administered it in a way which rendered it ineffective and had changed it to be a freedom of choice plan. The court found in regard to the senior high schools: "It does not work and will not work to desegregate the schools." As to the junior high schools the court said of the plan: "The School Board has no other plan to integrate the junior high schools and it is clear that the present plan will not change the racial identity of a single school." As to the elementary schools,

the plan before the court was one put into operation by the school board and which had not theretofore been considered by the court. Of this plan the court said:

> "It cannot even be described as a good-faith gesture toward constitutional requirements. The 'experiences' no doubt are enjoyed by the children and may perhaps be worthwhile, but the dual system of the School District remains unaffected. The constitutional mandate is not for integrated 'experiences,' but for a desegregated school system."

The trial court in its consideration of the Consultants' Plan found that it had been rejected vigorously by the school board, and said: "The Consultants Plan now stands without a sponsor denounced by friend and foe alike." The court then continued and accepted the school board's objections to the difficulties in administering the plan and found it to be "neither feasible nor workable."

The court then considered the plan proposed by the plaintiffs' consultant, Dr. Finger, considered the objections of the board, and found the plan to be a workable one. In referring to all the proposals, the court said:

> "From the foregoing observations and findings, it is manifest that we now have a plan that does not work, a plan that will not work, and a plan that will work. In this situation the court has no real choice. It must select the plan that promises realistically to work now."

It would not appear useful for the purposes of this opinion to consider the details of the plan adopted by the trial court. It provides for rearrangement of the grades which are considered to be junior high school grades, and an extensive rearrangement of the grades assigned to particular schools. There is in addition a substantial alteration of the attendance zones and the selection of schools feeding particular junior high schools and high schools.

The trial court found that a dual school system was now being maintained by the school board and that the board has totally failed to come forward with an acceptable plan of its own. The court pointed out that the attempt to solve the problem by a freedom of choice plan could not be effective to convert the dual system into a unitary system. The court pointed out the prior state-imposed segregation in Oklahoma and the presumptions which must arise therefrom in view of the ineffectiveness of any of the desegregation plans heretofore operated by the school board. The court further said:

> "This litigation has been frustratingly interminable, not because of insuperable difficulties of implementation of the commands of the Supreme Court of the United States and the Constitution of the United States, but because of the unpardonable recalcitrance of the Defendant Board and the Superintendent of Schools to come forward with a constitutional plan for the desegregation of the schools of this District."

The trial court considered in detail the decision in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, which was decided during the course of the litigation, together with the other pertinent opinions which need not be here described. The trial court pointed out that it had considered the teaching of the Swann case in relation to "balancing" of the school attendance between black and white students, and the mandate of the Supreme Court to accomplish the complete dismantling of the dual school systems.

The findings of the trial court are amply supported by the record; the plan approved by the trial court and as thereafter modified on remand from this court is well within the jurisdiction and power to accomplish the desegregation of the Oklahoma City schools. The trial court found that there has been no substantial desegregation of

the Oklahoma City schools, and the schools must thus be taken as they so exist on this appeal, in the face of the failure of the prior plan to produce the expected results.

The plan now approved by the trial court is a direct attack on what is still fundamentally a dual system to desegregate it as rapidly as possible. It was necessary for the trial court to adopt a comprehensive plan such as the one advanced by Dr. Finger in view of the fact that the school board did not come forward with an effective plan. Under these circumstances, it was apparent that the court must turn to outside consultants.

As indicated above, the trial court has considered the Swann decision, and what we consider the prohibitions therein contained against devices to balance the school population at particular schools between black and white students, and thereby to go beyond desegregation. We find no attempt by the trial court to so balance the attendance. The black to white ratio in the entire system was in evidence and was considered by all concerned, but the plan approved does not attempt to achieve anything beyond desegregation.

We do not have before us an issue concerning resegregation as in United States v. Board of Education, Independent School District No. 1, Tulsa County, Okla., 429 F.2d 1253 (10th Cir.).

The appellants urge as a separate point that the trial court lost jurisdiction by the entry of an order seeking to terminate the proceedings. However, there was no loss of jurisdiction in view of the motions which the parties thereafter filed for reconsideration. The jurisdiction was a continuing one, and following the directions of this court to hold hearings, the parties acquiesced therein and the proceedings continued as theretofore.

The school board also objects to the appointment of a bi-racial committee by the trial court to serve in an ad-

visory capacity. There is no legal basis for an objection to the existence of such a committee for the assistance of the court in an advisory capacity on matters pertaining to the approved plan. It is apparent that such a committee can have no function other than to so advise the court. As such, it is of course proper, if the trial court sees fit, for the committee to consult with the school board and with other public or private organizations that may be concerned. The committee has no authority to do more than to consult with such agencies as it has no authority to direct in any way their actions. As so limited in its function and authority, the appointment of a bi-racial committee is approved. The composition of such a limited committee is within the discretion of the trial court, and the services of community leaders may be sought by the court from time to time, wholly outside the recommendations that may have been made by the parties in this action.

AFFIRMED. The mandate shall issue forthwith.

APPENDIX C

FILED
AUG 21 1970
REX B. HAWKS
Clerk, U. S. District Court
By S. J. Bailey
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, an infant who sues by A. L. DOWELL, his father and next friend, et al.,
Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOL, et al.,
Defendants.

No. 9452 Civ.

FINDINGS AND ORDER

The Court finds and concludes that the time has come for this Court to divest itself of jurisdiction and end this case.

1. This action was originally filed in the Fall of 1961, and since that date this Court has carefully read every Supreme Court opinion on the subject and has overlooked no statutes, and has fully and completely performed its duties as required by the Constitution of the United States.

2. The Congress of the United States passed and the President approved what is known as the Civil Rights Act of 1964, wherein Congress provided a way and method of desegregating de jure schools throughout the South, and this Court and the Board of Education has been without

the benefit of this Act of Congress in solving the problems in this case.

3. This Court finds that the defendant Board of Education and those interested persons now understand that the Constitution of the United States requires that de jure public schools be desegregated in good-faith; that there no longer will be a dual school system, but a unitary school system where schools will not be black schools or white schools but just schools, and that this desegregation be accomplished now.

4. This Court has approved the defendants' Cluster Plan, which has been modified by the Court of Appeals (Tenth Circuit). Whether or not the school board will in good-faith operate under its Cluster Plan is to be seen; but should the Board of Education, not in good-faith operate under its declared Cluster Plan and there should be a failure to desegregate the junior and senior high schools as provided by the Constitution, such failure should be brought to the attention of the Attorney General of the United States for investigation and action. The Courts are always open to perform its functions in a plenary action brought by the Attorney General as provided by Congress of the United States.

5. This Court has heretofore ordered the Health, Education and Welfare to aid the defendant Board of Education in preparing and reporting a plan of desegregation of the elementary schools, and the Court now modifies this order that if the defendant Board of Education and the Health, Education and Welfare should be unable to arrive at the proper plan of desegregation of the elementary schools, then and in such event, the matter should be submitted to the Attorney General of the United States and the Attorney General will make such investigation and may bring such action as he deems necessary and proper to enforce desegregation of the elementary schools as provided by law and the Constitution.

6. IT IS DECREED that all orders heretofore entered by the Courts in the matter of desegregation of the Oklahoma City Public School System, be and remain in full force and effect, except as modified in paragraph five.

THEREFORE, IT IS ORDERED that this case be and is hereby closed.

Dated this 21st day of August 1970.

s/ Luther Bohanon
United States District Judge

APPENDIX D

FILED
MAY 3 1971
REX B. HAWKS
Clerk, U. S. District Court
By S. J. Bailey
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, Plaintiff,	)	
vs.	)	No. Civil 9452
THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, et al., Defendants.	)	

ORDER

On August 21, 1970, the Court filed its Findings and Order staying the proceedings in this cause. Thereafter the plaintiff filed its Motion to Reconsider. The proceedings in this case have been dormant during the school year 1970-1971 permitting a cooling period of the problems and awaiting the Opinion of the Supreme Court of the United States in the case of *James E. Swann, et al,* v. *Charlotte-Mecklenburg Board of Education, et al.,* which Opinion was handed down on April 20, 1971.

It is the belief of this Court that its Findings and Order of August 21, 1970, above referred to should be vacated and set aside, and

IT IS SO ORDERED.

Dated this 3rd day of May, 1971.

s/ Luther Bohanon
United States District Judge

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FILED
NOV 4 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-544

THE BOARD OF EDUCATION OF
THE OKLAHOMA CITY PUBLIC SCHOOLS, ETC., *et al.*,

Petitioners,

—versus—

ROBERT L. DOWELL, an infant who sues by A.L. DOWELL,
his father and next friend,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-544

THE BOARD OF EDUCATION OF
THE OKLAHOMA CITY PUBLIC SCHOOLS, ETC., *et al.*,

Petitioners,

—versus—

ROBERT L. DOWELL, an infant who sues by A.L. DOWELL,
his father and next friend,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Opinions Below

The opinion of the United States Court of Appeals for the Tenth Circuit is unreported but is reprinted in the appendix to the petition for Writ of Certiorari at pages lxxxv-xci. The opinion of the district court is reported at 338 F.Supp. 1256 (W.D. Okla. 1972) and appears in the same appendix at pages i-lxxv.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

Questions Presented

1. Whether the district court had jurisdiction to order implementation of a constitutionally acceptable desegregation plan.

2. Whether the district court abused its discretion in ordering the implementation of a plan which desegregates all the schools within the system.

3. Whether the district court's use of a system-wide ratio as a guideline in formulating an effective plan of desegregation went beyond that permitted by this Court in *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S.1 (1971).

Constitutional Provisions and Statutes Involved

This case involves the Fourteenth Amendment of the United States Constitution and particularly the equal protection clause thereof. This case also involves 42 U.S.C. Section 2000c-6 and Section 806 of Public Law 92-318.

Statement

This case involves the desegregation of the public schools of Oklahoma City, Oklahoma. During the eleven years of litigation since commencement of this suit in 1961, there have been numerous district court hearings, five appeals before the Tenth Circuit and review by this Court on four occasions.[1] In spite of this long history, the school board

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[1] *Dowell* v. *Board of Educ.*, 219 F.Supp. 427 (W.D. Okla. 1963); 244 F.Supp. 971 (W.D. Okla. 1965), aff'd 375 F.2d 158 (10th Cir. 1967), *cert. denied*, 387 U.S. 931 (1967); *Dowell* v. *Board of Educ.*, —— F.Supp. —— (W.D. Okla. Aug. 13, 1969), vacated —— F.2d —— (10th Cir. Aug. 27, 1969), —— U.S. —— (Brennan, J.

has failed to take affirmative action to eliminate segregation and establish a unitary school system. At the time of the commencement of the most recent district court hearings,[2] 78% of the public schools in Oklahoma City were at least 90% white or black in student enrollment; 31 schools of a total of 109 regular school facilities were attended entirely by students of one race. See Petitioners' Appendix at xxiv-xxvi.

At the time of the September 1971 district court hearing, the Board was operating under a secondary school desegregation plan previously approved by the court which purported to cluster high schools by academic subject matter in order to bring about mandatory participation in an integrated high school experience. The district court found, however, that the board had (without notice to or permission by the Court) altered the plan in such a way that it became essentially a freedom of choice plan. Students could enroll for all subjects required for graduation, in whatever academic area, in their own neighborhood schools—the courses located outside their neighborhood or "home base" school were all electives. The district court found that the cluster plan did not and could not work to desegregate the schools.

---

reinstating district court order pending Writ of Certiorari, Sept. 3, 1969), 396 U.S. 269 (1969) (per curiam) vacating August 27 opinion of Court of Appeals; *Dowell* v. *Board of Educ., of Oklahoma City*, 307 F.Supp. 583 (W.D. Okla. 1970), aff'd 430 F.2d 865 (10th Cir. 1970), —— U.S. —— (White, J., denying application for stay Sept. 9, 1970); *Dowell* v. *Board of Educ., of Okla. City*, —— F.Supp. —— (W.D. Okla. June 13, 1971), *reversed* —— F.2d —— (10th Cir. Aug. 20, 1971); *Dowell* v. *Board of Educ.*, 338 F.Supp. 1256 (W.D. Okla. 1972), aff'd —— F.2d —— (10th Cir. Feb. 4, 1972), —— U.S. —— (Rehnquist, J. denying application for stay, Aug. —, 1972).

[2] Hearings were held pursuant to an order of the Tenth Circuit on September 21, November 18-19 and December 9, 1971.

The Board's plan for the junior high school grades projected integration primarily by the closing of an all-black junior high. The Board later decided not to close the school, with the result that the only plan in operation for the junior high grades was an inter-school activity program. The district court held that a plan for intercultural exchange was not an adequate substitute for a real plan of desegregation.

The plan the court invalidated for elementary schools entailed inter-group exchanges for 4th, 5th and 6th graders, who could participate only with parental permission. No provision was made for Kindergarten through grade 3, and the basic racial composition of "neighborhood" schools was unaltered by the part-time inter-cultural activity program.

Two educational consultants appointed by the court presented an amended plan which proposed to continue use of the cluster plan at the high school level, initiate that program also at the junior high school level, and continue the limited elementary inter-cultural exchange for grades 4-6 on a mandatory basis. Plaintiffs and the defendant school board filed objections to the consultants' plan; an educational expert retained by plaintiffs presented a plan for full-time desegregation of the Oklahoma City schools at every grade level, with the exception of Kindergarten students who would be assigned to schools near their homes. The plan involved restructuring of grade assignment patterns and development of a new feeder system, based on that arrangement.

The district court entered an order February 2, 1972, approving the plan offered by plaintiffs in light of the Board's failure to submit an alternative workable plan, and the Board's total rejection of the plans submitted by the Court's consultants and plaintiffs' consultant.

On appeal to the United States Court of Appeals for the Tenth Circuit the judgment of the district court was in all respects affirmed. —— F.2d —— (10th Cir. August 4, 1972).

Reasons for Denying the Writ

I. The Judgment Below Was Not "Void for Lack of Jurisdiction."

On August 21, 1970, the trial court, *sua sponte,* entered an order purporting to divest itself of jurisdiction of this case. On September 2, 1970, plaintiffs filed a Motion for Extension of Time in which to file Motion to Set Aside [that] Order; and on September 8, 1970, plaintiffs filed a motion requesting the court to reconsider its August 21, 1970, Order. No action was taken by the trial court on plaintiffs' September 8, 1970, motion until May 3, 1971, at which time the Court vacated its order of August 21, 1970.

The trial court stated in footnote one to its memorandum opinion that:

> ". . . on August 21, 1970, this Court entered an order, on its own motion, closing this case. The plaintiffs immediately protested and subsequently on May 3, 1971, this Court vacated its earlier order."

(See Petitioners' Appendix xxiii)

In affirming the trial court's above-stated action, the Tenth Circuit stated:

> "The appellants [school board] urge as a separate point that the trial court lost jurisdiction by the entry of an order seeking to terminate the proceedings. However, there was no loss of jurisdiction in view of the motions

which the parties thereafter filed for reconsideration. The jurisdiction was a continuing one, and following the directions of this Court to hold hearings, the parties acquiesced therein and the proceedings continued as theretofore." (See *Dowell* v. *Board of Educ. of Oklahoma City Public Schools*, —— F.2d ——, Petitioners' Appendix at xci)

The board's argument in its Petition is premised upon its carefully selective factual statement, which omits mention of plaintiffs' timely motion for reconsideration of the trial court's *sua sponte* order. Not only is the contention totally without substance in light of the actual facts, but the Court of Appeals would clearly have erred had it sustained the board's position on this issue. *Raney* v. *Board of Educ., of Gould*, 391 U.S. 443 (1968); *Wright* v. *Board of Public Instruction*, No. 71-2264 —— F.2d —— (5th Cir. Aug. 18, 1971); *Steele* v. *Board of Public Instruction*, No. 71-2265 —— F.2d —— (5th Cir. Sept. 3, 1971); *Youngblood* v. *Board of Public Instruction*, No. 71-2263 —— F.2d —— (5th Cir. Sept. 14, 1971); *Goss* v. *Board of Educ.*, of *Knoxville, Tenn.*, 406 F.2d 1183 (6th Cir. 1969); *United States of America* v. *Board of Educ., of Tulsa, Okla.*, 429 F.2d 1253 (10th Cir. 1970).

II. The District Court Properly Exercised Its Equitable Power in Ordering a Plan Which Desegregates All Schools in the System.

Petitioners allege that some schools in the system have changed their racial compositions from predominantly white to predominantly black because of residential movement only and therefore should have been exempted from the desegregation plan ordered by the district court. In support of this contention they point to the ruling of the Tenth Circuit in *Keyes* v. *School Dist. No. 1, Denver Col-*

orado, 445 F.2d 990 (10th Cir. 1971), *cert. granted,* 404 U.S. 1036 (1971), and several older cases from other Circuits.

Petitioners misstate the case on this question. No "undisputed and uncontroverted evidence" concerning any such schools was introduced below, nor was this issue raised on appeal to the Tenth Circuit in the instant case. The issue was first presented in a Motion for a Stay pending filing of a Petition for Writ of Certiorari in this Court.

Even if the issue had been properly presented below, the petitioners' allegation is without merit. The Tenth Circuit dismissed the argument as follows:

> The trial court found that there has been no substantial desegregation of the Oklahoma city schools, and the schools must thus be taken as they so exist on this appeal, in the face of the failure of the prior plan to produce the expected results . . . We do not have before us an issue concerning resegregation . . . (Appendix to Petition, xc—xci)

The obligation to desegregate may end at some point in time after school authorities have affirmatively created a unitary system. *Swann* v. *Charlotte-Mecklenberg Board of Educ.,* 402 U.S. 1, 30-31 (1971). But until that duty is undertaken and accomplished, school officials must dismantle all one-race schools in the system, even those resulting in part from shifting residential patterns. See *Flax* v. *Potts,* No. 71-2715 (5th Cir. July 14, 1971).

There is no conflict between the Tenth Circuit's *Denver* decision and this one on the issues presented by the school board. The Court of Appeals applies a consistent theory—whether correct or not, see Brief for Petitioners, No. 71-550, *Keyes* v. *School Dist. No. 1, Denver,*—to both cases.

It distinguishes between systems with past state-mandated segregation (Oklahoma City) and those without it (Denver). The same distinction was applied by the Sixth Circuit in *Deal* v. *Cincinnati Board of Educ.*, 369 F.2d 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967), also cited by the school board as being in conflict with the decision below:

> Appellants place much emphasis on *Dowell* v. *School Board of Oklahoma City Public Schools*, 244 F. Supp. 971 (W.D. Okla. 1965), but we are unable to adapt that case to the problem of racial imbalance. Despite appellants' assertion that the District Court in *Dowell* dealt with facts similar to those in this case before us, it is clear that it did not. In that case the problem was one of initial desegregation of a school system which had previously been organized along the dual racial lines condemned by *Brown*.

369 F.2d at 62-63. Thus it seems clear that the Sixth Circuit would have decided this case in exactly the same manner as the Tenth Circuit. Cf. *Kelley* v. *Metropolitan County Board of Educ.*, 463 F.2d 732, 744 (6th Cir. 1972).

III. The Plan Ordered by the District Court Does Not Require Racial Balance.

Petitioners assert that the plan approved below required racial balance in contravention of prohibitions announced in *Swann*. Not only did the District Court explicitly refuse to require racial balance, (see Appendix, p. xiv) the Court of Appeals pointedly affirmed on this issue:

> [T]he trial court has considered the Swann decision, and what we consider the prohibitions therein contained against devices to balance the school population at particular schools between black and white students,

> and thereby to go beyond desegregation. We find no attempt by the trial court to so balance the attendance. The black to white ratio in the entire system was in evidence and was considered by all concerned, but the plan approved does not attempt to achieve anything beyond desegregation. (Appendix p. xci)

A glance at the projected enrollments at the various individual schools under the plan approved by the district court demonstrates that the variance in the racial composition is easily as great as that which resulted in *Swann*. Thus there is absolutely no basis for the board's contention that the district court and Court of Appeals approved a "racial balance" plan.

CONCLUSION

Respondents pray that the petition be in all respects denied for the foregoing reasons.

Respectfully submitted,

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